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CHAPTER ~~4.2~~ XX.

VIRGINIA CONDOMINIUM ACT.

Drafting note: Existing Chapter 4.2, the Virginia Condominium Act, is retained as proposed Chapter XX. Articles 1, 2, and 3 of existing Chapter 4.2 are retained in that order in this proposed chapter. Article 4 of existing Chapter 4.2 is logically reorganized as proposed Articles 4 and 5 of this chapter.

Article 1.

General Provisions.

Drafting note: Existing Article 1, containing general provisions for the Virginia Condominium Act, is retained as proposed Article 1.

~~§ 55-79.39. How chapter cited.~~

~~This chapter shall be known and may be cited as the "Condominium Act."~~

Drafting note: Existing § 55-79.39 is recommended for repeal on the basis of § 1-244, which states that the caption of a subtitle, chapter, or article operates as a short title citation. The short title citation is retained in the title of this chapter.

~~§ 55-79.41~~ 55.1-xxx. Definitions.

~~When As~~ used in this chapter, unless the context requires a different meaning:

"Capital components" means those items, whether or not a part of the common elements, for which the unit owners' association has the obligation for repair, replacement, or restoration and for which the executive ~~organ~~ board determines funding is necessary.

"Common elements" means all portions of the condominium other than the units.

"Common expenses" means all expenditures lawfully made or incurred by or on behalf of the unit owners' association, together with all funds lawfully assessed for the creation ~~and/or~~ or maintenance of reserves pursuant to the provisions of the condominium instruments.

"Common interest community manager" means the same as that term is defined in § 54.1-2345.

27 "Condominium" means real property, and any incidents ~~thereto to~~ or interests ~~therein in~~
28 such real property, lawfully ~~submitted subject~~ to this chapter by the recordation of condominium
29 instruments pursuant to the provisions of this chapter. No project shall be deemed a
30 condominium within the meaning of this chapter unless the undivided interests in the common
31 elements are vested in the unit owners.

32 "Condominium instruments" ~~is a collective term referring to~~ means, collectively, the
33 declaration, bylaws, and plats and plans, recorded pursuant to the provisions of this chapter.
34 Any exhibit, schedule, or certification ~~accompanying recorded with~~ a condominium instrument
35 ~~and recorded simultaneously therewith~~ shall be deemed an integral part of that condominium
36 instrument. ~~Any Once recorded, any~~ amendment or certification of any condominium
37 instrument shall, ~~from the time of the recordation of such amendment or certification,~~ be
38 deemed an integral part of the affected condominium instrument, ~~so long as if~~ such amendment
39 or certification was made in accordance with the provisions of this chapter.

40 "Condominium unit" means a unit together with the undivided interest in the common
41 elements appertaining to that unit. ~~(Cf. the definition of unit, infra.)~~

42 "Contractable condominium" means a condominium from which one or more portions of
43 the submitted land may be withdrawn in accordance with the provisions of the declaration and
44 of this chapter. If such withdrawal can occur only by the expiration or termination of one or
45 more leases, then the condominium shall not be deemed a contractable condominium ~~within the~~
46 meaning of this chapter.

47 "Conversion condominium" means a condominium containing structures ~~which that~~
48 before the recording of the declaration, were wholly or partially occupied by persons other than
49 those who have contracted for the purchase of condominium units and those who occupy with
50 the consent of such purchasers.

51 "Convertible land" means ~~a building site; that is to say,~~ a portion of the common
52 elements, within which additional units ~~and/or or~~ limited common elements may be created in
53 accordance with the provisions of this chapter.

54 "Convertible space" means a portion of a structure within the condominium, ~~which~~
55 ~~portion that a declarant~~ may ~~be converted~~ convert into one or more units ~~and/or or~~ common
56 elements, including ~~but not limited to~~ limited common elements, in accordance with the
57 provisions of the declaration and this chapter. ~~(Cf. the definition of unit, infra.)~~

58 "Declarant" means any person, or group of persons acting in concert, that (i) offers to
59 dispose of ~~his or~~ its interest in a condominium unit not previously disposed of, including an
60 institutional lender ~~which that~~ may not have succeeded to or accepted any special declarant
61 rights pursuant to § ~~55-79.74:3~~ 55.1-xxx; (ii) reserves or succeeds to any special declarant right;
62 or (iii) applies for registration of the condominium. However, for the purposes of clauses (i) and
63 (iii), ~~the term~~ "declarant" ~~shall~~ does not include an institutional lender ~~which that~~ acquires title
64 by foreclosure or deed in lieu ~~thereof of foreclosure~~ unless such lender offers to dispose of its
65 interest in a condominium unit not previously disposed of to anyone not in the business of
66 selling real estate for his own account, except as otherwise provided in § ~~55-79.74:3~~ 55.1-xxx.
67 ~~The term "declarant" shall~~ "Declarant" does not include an individual who acquires title to a
68 condominium unit at a foreclosure sale.

69 "Dispose" or "disposition" refers to any voluntary transfer of a legal or equitable interest
70 in a condominium unit to a purchaser, but ~~shall~~ does not include the transfer or release of
71 security for a debt.

72 "Electronic ~~transmission means~~" means any form of communication, not directly
73 involving the physical transmission of paper, that creates a record that may be retained,
74 retrieved, and reviewed by a recipient ~~thereof, and that may be directly reproduced in paper~~
75 ~~form by such a recipient through an automated process of such communication~~. Any term used
76 in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act ~~shall~~
77 ~~have has~~ the meaning set forth in ~~such that~~ section.

78 "Executive ~~organ board~~" means an executive and administrative entity, by whatever
79 name denominated, designated in the condominium instruments as the governing body of the
80 unit owners' association.

81 "Expandable condominium" means a condominium to which additional land may be
82 added in accordance with the provisions of the declaration and ~~of~~ this chapter.

83 ~~"Financial update" means an update of the financial information referenced in~~
84 ~~subdivisions C 2 through C 7 of § 55-79.97.~~

85 "Future common expenses" means common expenses for which assessments are not yet
86 due and payable.

87 "Identifying number" means one or more letters ~~and/or or~~ numbers that identify only one
88 unit in the condominium.

89 "Institutional lender" means one or more commercial or savings banks, savings and loan
90 associations, trust companies, credit unions, industrial loan associations, insurance companies,
91 pension funds, or business trusts, including ~~but not limited to~~ real estate investment trusts, any
92 other lender regularly engaged in financing the purchase, construction, or improvement of real
93 estate, or any assignee of loans made by such a lender, or any combination of any of the
94 foregoing entities.

95 "Land" is a three-dimensional concept and includes parcels with upper or lower
96 boundaries, or both upper and lower boundaries, as well as parcels extending ab solo usque ad
97 coelum. Parcels of airspace constitute land within the meaning of this chapter. Any requirement
98 in this chapter of a legally sufficient description shall be deemed to include a requirement that
99 the upper or lower boundaries, if any, of the parcel in question be identified with reference to
100 established datum.

101 "Leasehold condominium" means a condominium in all or any portion of which each
102 unit owner owns an estate for years in his unit, or in the land within which that unit is situated,
103 or both, with all such leasehold interests due to expire naturally at the same time. A
104 condominium including leased land, or an interest ~~therein in such land~~, within which no units
105 are situated or to be situated ~~shall not be deemed is not~~ a leasehold condominium within the
106 meaning of this chapter.

107 "Limited common element" means a portion of the common elements reserved for the
108 exclusive use of those entitled to the use of one or more, but less than all, of the units.

109 ~~"Meeting" or "meetings" means the formal gathering of the executive organ where the
110 business of the unit owners' association is discussed or transacted.~~

111 "Nonbinding reservation agreement" means an agreement between the declarant and a
112 prospective purchaser ~~which that~~ is in no way binding on the prospective purchaser and ~~which
113 that~~ may be canceled without penalty at the sole discretion of the prospective purchaser ~~by
114 written notice, hand delivered or sent by United States mail, return receipt requested, to the
115 declarant or to any sales agent of the declarant at any time prior to the formation of a contract
116 for the sale or lease of a condominium unit or an interest therein. Such agreement shall not
117 contain any provision for waiver or any other provision in derogation of the rights of the
118 prospective purchaser as contemplated by this subsection, nor shall any such provision be a part
119 of any ancillary agreement.~~

120 "Offer" means any inducement, solicitation, or attempt to encourage any person ~~or
121 persons~~ to acquire any legal or equitable interest in a condominium unit, except as security for a
122 debt. Nothing ~~shall be considered an "offer" which that~~ expressly states that the condominium
123 has not been registered with the Common Interest Community Board and that no unit in the
124 condominium can or will be offered for sale until such time as the condominium has been so
125 registered shall be considered an "offer."

126 "Officer" means any member of the executive ~~organ board~~ or official of the unit owners'
127 association.

128 "Par value" means a number of dollars or points assigned to each unit by the declaration.
129 Substantially identical units shall be assigned the same par value, but units located at
130 substantially different heights above the ground, or having substantially different views, or
131 having substantially different amenities or other characteristics that might result in differences
132 in market value, may, ~~but need not~~, be considered substantially identical within the meaning of
133 this subsection §§ 55.1-xxx and 55.1-xxx [§§ 55-79.55 and 55-79.56]. If par value is stated in

134 ~~terms of dollars, that statement shall not be deemed to reflect or control the sales price or fair~~
135 ~~market value of any unit, and no opinion, appraisal, or fair market transaction at a different~~
136 ~~figure shall affect the par value of any unit, or any undivided interest in the common elements,~~
137 ~~voting rights in the unit owners' association or liability for common expenses assigned on the~~
138 ~~basis thereof.~~

139 "Person" means a natural person, corporation, partnership, association, trust, or other
140 entity capable of holding title to real property, or any combination thereof.

141 "Purchaser" means any person ~~or persons~~, other than a declarant, ~~who acquire that~~
142 acquires by means of a voluntary transfer a legal or equitable interest in a condominium unit,
143 other than (i) a leasehold interest, including renewal options, of less than 20 years or (ii) as
144 security for a debt.

145 ~~"Resale certificate update" means an update of the financial information referenced in~~
146 ~~subdivisions C 2 through C 9 and C 12 of § 55-79.97. The update shall include a copy of the~~
147 ~~original resale certificate.~~

148 "Settlement agent" means the same as that term is defined in § ~~55-525.16~~ 55.1-xxx.

149 "Size" means the number of cubic feet, or the number of square feet of ground ~~and/or or~~
150 floor space, within each unit as computed by reference to the plat and plans and rounded ~~off to a~~
151 the nearest whole number. Certain spaces within the units, including, ~~without limitation~~, attic,
152 basement, ~~and/or or~~ garage space, may, ~~but need not~~, be omitted from such calculation or
153 partially discounted by the use of a ratio, so long as the same basis of calculation is employed
154 for all units in the condominium; and so long as that basis is described in the declaration.

155 "Special declarant rights" means any right reserved for the benefit of a declarant, or of a
156 person or group of persons that becomes a declarant, to (i) expand an expandable
157 condominium; (ii) contract a contractable condominium; (iii) convert convertible land or
158 convertible space or both; (iv) appoint or remove any officers of the unit owners' association or
159 the executive ~~organ board~~ pursuant to subsection A of § ~~55-79.74~~, 55.1-xxx; (v) exercise any
160 power or responsibility otherwise assigned by any condominium instrument or by this chapter to

161 the unit owners' association, any officer, or the executive ~~organ,~~ board; or (vi) maintain sales
162 offices, management offices, model units, and signs pursuant to § ~~55-79.66~~ 55.1-xxx.

163 "Unit" means a portion of the condominium designed and intended for individual
164 ownership and use. ~~(Cf. the definition of condominium unit, supra.)~~ For the purposes of this
165 chapter, a convertible space shall be treated as a unit in accordance with subsection ~~(d)~~ D of §
166 ~~55-79.62~~ 55.1-xxx.

167 "Unit owner" means one or more persons ~~who~~ that own a condominium unit or, in the
168 case of a leasehold condominium, whose leasehold interest ~~or interests~~ in the condominium
169 extend extends for the entire balance of the unexpired term ~~or terms~~. "Unit owner" includes any
170 purchaser of a condominium unit at a foreclosure sale, regardless of whether the deed is
171 recorded in the land records where the unit is located. "Unit owner" does not include any person
172 ~~or persons~~ holding an interest in a condominium unit solely as security for a debt.

173 **Drafting note: Throughout this section and the chapter, the term "executive organ"**
174 **is replaced with "executive board" for consistency with the Uniform Common Interest**
175 **Ownership Act adopted by the Uniform Law Commission. The definition "electronic**
176 **transmission" has been changed to "electronic means" for consistency with the Uniform**
177 **Electronic Transactions Act (§ 59.1-479 et seq.). In the definitions of "common expenses,"**
178 **"convertible land," "convertible space," "identifying number," and "size," the term**
179 **"and/or," a grammatical shortcut that is inherently ambiguous, is replaced with the word**
180 **"or" to reflect its meaning in the sense of either or both/all. In the definitions of**
181 **"condominium unit," "convertible space," and "unit," the parenthetical explanatory**
182 **language is deleted as unnecessary because the terms referred to for comparison are terms**
183 **that are defined in this section. In the definitions of "convertible space" and "institutional**
184 **lender," the phrase "but not limited to" is stricken after the term "including" and in the**
185 **definition of "size," the phrase "without limitation" is deleted after the term "including"**
186 **on the basis of § 1-218, which states that throughout the Code "'Includes' means includes,**
187 **but not limited to." The definitions of "financial update" and "resale certificate update"**

188 are relocated to proposed § 55.1-xxx [§ 55-79.97], which contains the definitions that
189 related to resale disclosure required for condominiums. The definition of "meeting" is
190 deleted because it is inconsistent with the provisions of proposed § 55.1-xxx [§ 55-79.75], in
191 which rules are outlined for both association meetings and executive board meetings; the
192 definition of "meeting" only applied to executive board meetings and created confusion. In
193 the definitions of "offer," "purchaser," and "unit owner," the phrase "or persons" is
194 stricken and in the definition of "unit owner," the phrases "or interests" and "or terms"
195 are stricken on the basis of § 1-227, which states that throughout the Code any word used
196 in the singular includes the plural. Substantive content in the definition of "nonbinding
197 reservation agreement" is relocated to proposed subdivision 4 of § 55.1-xxx [§ 55-79.88],
198 which deals with limitations on disposition of units. Substantive content in the definition of
199 "par value" is relocated to proposed subsection A of § 55.1-xxx [§ 55-79.55], which
200 outlines how par value is to be calculated. In the definition of "par value," "this
201 subsection" is replaced with specific references to the sections of the chapter that deal with
202 allocation and reallocation of interest in the common elements. In the definition of "size,"
203 reference to rounding to the nearest whole number of cubic or square feet is added for
204 clarity and accuracy. Technical changes are made.

205 § ~~55-79.40~~ 55.1-xxx. Application and construction of chapter.

206 A. This chapter ~~shall apply~~ applies to all condominiums and to all horizontal property
207 regimes or condominium projects. ~~For the purposes of this chapter, the terms "horizontal~~
208 ~~property regime" and "condominium project" shall be deemed to correspond to the term~~
209 ~~"condominium"; the term "apartment" shall be deemed to correspond to the term "unit"; the~~
210 ~~term "co-owner" shall be deemed to correspond to the term "unit owner"; the term "council of~~
211 ~~co-owners" shall be deemed to correspond to the term "unit owners' association"; the term~~
212 ~~"developer" shall be deemed to correspond to the term "declarant"; the term "general common~~
213 ~~elements" shall be deemed to correspond to the term "common elements"; and the terms "master~~
214 ~~deed" and "master lease" shall be deemed to correspond to the term "declaration" and shall be~~

215 ~~deemed included in the term "condominium instruments."~~ This chapter ~~shall be deemed to~~
216 ~~supersede~~ supersedes the Horizontal Property Act, ~~§§ 55-79.1 through 55-79.38 (§ 55.1-xxx et~~
217 ~~seq.),~~ and no condominium shall be established under ~~the latter~~ the Horizontal Property Act on
218 or after July 1, 1974. ~~But this~~ This chapter shall not be construed to affect the validity of any
219 provision of any condominium instrument recorded prior to July 1, 1974. ~~Nor shall Article 4 (§~~
220 ~~55-79.86 et seq.) of this chapter be deemed to supersede §§ 55-79.16 through 55-79.31 of the~~
221 ~~Horizontal Property Act as to any condominiums established prior to the effective date hereof.~~
222 For the purposes of this chapter, as used in the Horizontal Property Act (§ 55.1-xxx et seq.):

223 "Apartment" corresponds to the term "unit."

224 "Co-owner" corresponds to the term "unit owner."

225 "Council of co-owners" corresponds to the term "unit owners' association."

226 "Developer" corresponds to the term "declarant."

227 "General common elements" corresponds to the term "common elements."

228 "Horizontal property regime" and "condominium project" corresponds to the term
229 "condominium."

230 "Master deed" and "master lease" correspond to the term "declaration" and are included
231 in the term "condominium instruments."

232 B. This chapter ~~shall~~ does not apply to condominiums located outside the
233 Commonwealth. Sections ~~55-79.88 55.1-xxx~~ through ~~55-79.94 55.1-xxx~~ and §§ ~~55-79.98 55.1-~~
234 ~~xxx~~ through ~~55-79.103 55.1-xxx~~ ~~shall apply~~ apply to all contracts for the disposition of
235 condominium units signed in the Commonwealth by any person, unless exempt under § ~~55-~~
236 ~~79.87 55.1-xxx~~.

237 C. Subsection B of § ~~55-79.79 55.1-xxx~~ and § ~~55-79.94 55.1-xxx~~ do not apply to the
238 declarant of a conversion condominium if that declarant is a proprietary lessees' association that,
239 immediately before the creation of the condominium, owned fee simple title to or a fee simple
240 reversionary interest in the real estate described pursuant to subdivision ~~(a) (3) A 3~~ A 3 of § ~~55-~~
241 ~~79.54 55.1-xxx~~.

242 **Drafting note: In subsection A, language stating that certain sections of existing**
243 **Article 4 of the Virginia Condominium Act do not supersede certain sections of the**
244 **existing Horizontal Property Act is recommended for deletion; the sections of the**
245 **Horizontal Property Act referenced in subsection A are obsolete as of July 1, 1974, the**
246 **date upon which the Virginia Condominium Act superseded the Horizontal Property Act.**
247 **As of July 1, 1974, no new developments have been established under a horizontal**
248 **property regime due to the Act's obsolescence. The corresponding term definitions are**
249 **relocated to the end of subsection A and reorganized as definitions for consistency with**
250 **similar provisions in the proposed Property Owners' Association Act (§ 55.1-xxx et seq.).**
251 **Technical changes are made.**

252 § ~~55-79.41:1~~ 55.1-xxx. Variation by agreement.

253 Except as expressly provided in this chapter, provisions of this chapter ~~may shall~~ not be
254 varied by agreement, and rights conferred by this chapter ~~may shall~~ not be waived. A declarant
255 ~~may shall~~ not act under power of attorney or use any other device to evade the limitations or
256 prohibitions of this chapter or of the condominium instruments.

257 **Drafting note: The word "may" is replaced with "shall" because the phrase "may**
258 **not" as used in this section expresses an absolute prohibition, which, to be consistent**
259 **throughout the Code, is more properly expressed by the phrase "shall not."**

260 § ~~55-79.42~~ 55.1-xxx. Separate assessments, titles, and taxation.

261 Except as otherwise provided in ~~the following sentence~~ this section, each condominium
262 unit constitutes ~~for all purposes~~ a separate parcel of real estate. If there is any unit owner other
263 than the declarant, each unit, together with its common element interest, but excluding its
264 common element interest in convertible land and in any withdrawable land within which the
265 declarant has the right to create units ~~and/or or~~ limited common elements, shall be separately
266 assessed and taxed. Each convertible land and withdrawable land within which the declarant has
267 the right to create units ~~and/or or~~ limited common elements shall be separately assessed and
268 taxed against the declarant.

269 **Drafting note: The term "and/or," a grammatical shortcut that is inherently**
270 **ambiguous, is replaced with the word "or" to reflect its meaning in the sense of either or**
271 **both/all. Technical changes are made.**

272 § ~~55-79.42:1~~ 55.1-xxx. Association charges.

273 Except as expressly authorized in this chapter, in the condominium instruments, or as
274 otherwise provided by law, no unit owners' association may make an assessment or impose a
275 charge against a unit owner unless the charge is (i) authorized under § ~~55-79.83~~ 55.1-xxx, (ii) a
276 fee for services provided, or (iii) related to the provisions set out in § ~~55-79.97:1~~ 55.1-xxx. The
277 Common Interest Community Board may assess a monetary penalty for a violation of this
278 section against any (a) unit owners' association pursuant to § 54.1-2351 or (b) common interest
279 community manager pursuant to § 54.1-2349; and may issue a cease and desist order pursuant to
280 § 54.1-2349 or 54.1-2352, as applicable.

281 **Drafting note: No change.**

282 § ~~55-79.43~~ 55.1-xxx. ~~County and municipal~~ Local ordinances; nonconforming
283 conversion condominiums; applicability of Uniform Statewide Building Code; other
284 regulations.

285 A. No zoning or other land use ordinance shall prohibit condominiums ~~as such by reason~~
286 solely on the basis of the form of ownership ~~inherent therein. Neither, nor~~ shall any
287 condominium be treated differently by any zoning or other land use ordinance ~~which that~~ would
288 permit a physically identical project or development under a different form of ownership.
289 Except as provided in subsection E, no local government may require further review or approval
290 to record condominium instruments when a property has previously complied with subdivision,
291 site plan, zoning, or other applicable land use regulations.

292 B. Subdivision and site plan ordinances in any ~~county, city or town in the~~
293 Commonwealth locality shall apply to any condominium in the same manner as such ordinances
294 would apply to a physically identical project or development under a different form of
295 ownership; however, the declarant need not apply for or obtain subdivision approval to record

296 condominium instruments if site plan approval for the land being submitted to the condominium
297 has first been obtained.

298 C. During development of a condominium containing additional land or withdrawable
299 land, phase lines created by the condominium instruments shall not be considered property lines
300 for purposes of subdivision. If the condominium can no longer be expanded by the addition of
301 additional land, then the owner of the land not part of the condominium shall subdivide such
302 land prior to its conveyance, unless such land is subject to an approved site plan as provided in
303 subsection B ~~of this section~~, or prior to modification of such approved site plan. In the event of
304 any conveyance of land within phase lines of the condominium, the condominium and any lot
305 created by such conveyance shall be deemed to comply with the local subdivision ordinance,
306 provided that such land is subject to an approved site plan.

307 D. During the period of declarant control and as long as the declarant has the right to
308 create additional units or to complete the common elements, the declarant has the authority to
309 execute, file, and process any subdivision, site plan, zoning, or other land use applications or
310 disclosures, including related conditional zoning proffers and agreements ~~incidental thereto~~ that
311 do not create an affirmative obligation on the unit owners' association without its consent, with
312 respect to the common elements or applications affecting more than one unit, notwithstanding
313 that the declarant is not the owner of the land.

314 In accordance with subsection B of § ~~55-79.80~~ 55.1-xxx, once the declarant no longer
315 has such authority, the executive ~~organ~~ board of the unit owners' association, if any, and if not,
316 then a representative duly appointed by the unit owners' association, shall have the authority to
317 execute, file, and process any subdivision, site plan, zoning, or other land use applications or
318 disclosures, including related conditional zoning proffers and agreements ~~incidental thereto~~ that
319 do not create an affirmative obligation on the declarant without its consent, with respect to the
320 common elements or applications affecting more than one unit, notwithstanding that the unit
321 owners' association is not the owner of the land. Such applications shall not adversely affect the
322 rights of the declarant to develop additional land. For purposes of obtaining building and

323 occupancy permits, the unit owner, ~~(including the declarant if the declarant is the unit owner),~~
324 shall apply for permits for the unit, and the unit owners' association shall apply for permits for
325 the common elements, except that the declarant shall apply for permits for convertible land.

326 E. ~~Counties, cities and towns~~ Localities may provide by ordinance that the declarant of a
327 proposed conversion ~~condominiums and the use thereof, which do~~ condominium that does not
328 conform to the zoning, land use, and site plan regulations of the respective ~~county or city~~
329 locality in which the property is located, shall secure a special use permit, a special exception, or
330 a variance, as the case may be, prior to such ~~property~~ property's becoming a conversion
331 condominium. ~~A~~ The local authority shall grant a request for such a special use permit, special
332 exception, or variance filed on or after July 1, 1982, ~~shall be granted~~ if the applicant can
333 demonstrate to the reasonable satisfaction of the local authority that the nonconformities are not
334 likely to be adversely affected by the proposed conversion. ~~No~~ The local authority shall not
335 unreasonably delay action on any such request ~~shall be unreasonably delayed~~. In the event of an
336 approved conversion to condominium ownership, ~~counties, cities, towns~~ a locality, sanitary
337 ~~districts~~ district, or other political ~~subdivisions~~ subdivision may impose such charges and fees as
338 are lawfully imposed by such locality, sanitary district, or political ~~subdivisions~~ subdivision as a
339 result of construction of new structures to the extent that such charges and fees, or portions of
340 such charges and fees, imposed upon property subject to such conversions may be reasonably
341 related to greater or additional services provided by the locality, sanitary district, or political
342 subdivision as a result of the conversion.

343 F. Nothing in this section shall be construed to permit application of any provision of the
344 Uniform Statewide Building Code (§ 36-97 et seq.) or any local ordinances regulating design
345 and construction of roads, sewer and water lines, stormwater management facilities, and other
346 public infrastructure, to a condominium in a manner different from the manner in which such
347 provision is applied to other buildings of similar physical form and nature of occupancy.

348 **Drafting note: In the catchline, the phrase "County and municipal" is replaced**
349 **with "Local" and in subsections B and E, the phrase "counties, cities, and towns" is**

350 replaced with the term "locality" on the basis of § 1-221, which states that throughout the
351 Code "'Locality' means a county, city, or town as the context may require." In subsection
352 D, the term "executive organ" is changed to "executive board" for consistency with the
353 term as it is defined in § 55.1-xxx [§ 55-79.41]. In subsection E, language is re-worded for
354 clarity. In subsection E, the terms "locality" and "sanitary district" are added to the list of
355 local authorities that may impose fees on conversion condominiums for internal
356 consistency in the subsection. Also in subsection E, changes are made to use the active
357 voice. Technical changes are made.

358 § ~~55-79.44~~ 55.1-xxx. Eminent domain.

359 ~~(a)-A.~~ If any portion of the common elements is taken by eminent domain, the award
360 ~~therefor~~ for such taking shall be paid to the unit owners' association. ~~Provided,~~ provided,
361 however, that the portion of the award attributable to the taking of any permanently assigned
362 limited common element shall be allocated by the decree to the unit owner of the unit to which
363 that limited common element was so assigned at the time of the taking. If that limited common
364 element was permanently assigned to more than one unit at the time of the taking, then the
365 portion of the award attributable to the taking ~~thereof~~ of such limited common element shall be
366 allocated in equal shares to the unit owners of the units to which it was so assigned or in such
367 other shares as the condominium instruments may specify for this express purpose. A
368 permanently assigned limited common element is a limited common element ~~which that~~ cannot
369 be reassigned or ~~which that~~ can be reassigned only with the consent of the unit owner ~~or owners~~
370 of the unit ~~or units~~ to which it is assigned in accordance with § ~~55-79.57~~ 55.1-xxx.

371 ~~(b)-B.~~ If one or more units is taken by eminent domain, the undivided interest in the
372 common elements appertaining to any such unit shall thenceforth appertain to the remaining
373 units, being allocated to them in proportion to their respective undivided interests in the
374 common elements. The court shall enter a decree reflecting the reallocation of undivided
375 interests produced ~~thereby~~ by such taking, and the award shall include, ~~without limitation,~~ just

376 compensation to the unit owner of any unit taken for his undivided interest in the common
377 elements as well as for his unit.

378 ~~(e)~~C. 1. If portions of any unit are taken by eminent domain, the court shall determine
379 the fair market value of the portions of such unit not taken, and the undivided interest in the
380 common elements appertaining to any such units shall be reduced, in the case of each such unit,
381 in proportion to the diminution in the fair market value of such unit resulting from the taking.

382 2. The portions of undivided interest in the common elements thereby divested from the
383 unit owners of any such units shall be reallocated among those units and the other units in the
384 condominium in proportion to their respective undivided interests in the common elements, with
385 any units partially taken participating in such reallocation on the basis of their undivided
386 interests as reduced in accordance with ~~the preceding sentence~~ subdivision 1.

387 3. The court shall enter a decree reflecting the reallocation of undivided interests
388 produced thereby, and the award shall include, ~~without limitation,~~ just compensation to the unit
389 owner of any unit partially taken for that portion of his undivided interest in the common
390 elements divested ~~from him~~ by operation of ~~the first sentence of this subsection~~ subdivision 1
391 and not revested ~~in him~~ by operation of ~~the following sentence~~ subdivision 2, as well as for that
392 portion of his unit taken by eminent domain.

393 ~~(d)~~D. If, however, the taking of a portion of any unit makes it impractical to use the
394 remaining portion of that unit for any lawful purpose permitted by the condominium
395 instruments, then the entire undivided interest in the common elements appertaining to that unit
396 shall thenceforth appertain to the remaining units, being allocated to them in proportion to their
397 respective undivided interests in the common elements, and the remaining portion of that unit
398 shall thenceforth be a common element. The court shall enter a decree reflecting the reallocation
399 of undivided interests produced thereby, and the award shall include, ~~without limitation,~~ just
400 compensation to the unit owner of such unit for his entire undivided interest in the common
401 elements and for his entire unit.

402 ~~(e)~~-E. Votes in the unit owners' association, rights to future common profits, and
403 liabilities for future common expenses not specially assessed, appertaining to any unit ~~or units~~
404 taken or partially taken by eminent domain, shall thenceforth appertain to the remaining units,
405 being allocated to them in proportion to their relative voting strength in the unit owners'
406 association, with any units partially taken participating in such reallocation as though their
407 voting strength in the unit owners' association had been reduced in proportion to the reduction in
408 their undivided interests in the common elements, and the decree of the court shall provide
409 accordingly.

410 ~~(f)~~-F. The decree of the court shall require the recordation ~~thereof~~ of such decree among
411 the land records of the county or city ~~or county~~ in which the condominium is located.

412 **Drafting note: In proposed subsections B, C, and D, the phrase "without**
413 **limitation" is stricken after the term "include" on the basis of § 1-218, which states that**
414 **throughout the Code "'Includes' means includes, but not limited to." In proposed**
415 **subsection C, subdivisions are added for clarity with internal cross-references. In**
416 **proposed subsections A and E, plural usage of owners and units are stricken on the basis**
417 **of § 1-227, which states that throughout the Code any word used in the singular includes**
418 **the plural. Technical changes are made.**

419 Article 2.

420 Creation, Alteration, and Termination of Condominiums.

421 **Drafting note: Existing Article 2, containing sections related to the creation,**
422 **alteration, and termination of condominiums, is retained as proposed Article 2.**

423 ~~§ 55-79.45~~ 55.1-xxx. How condominium may be created.

424 No condominium shall come into existence except by the recordation of condominium
425 instruments pursuant to the provisions of this chapter. No condominium instruments shall be
426 recorded unless all units located or to be located on any portion of the submitted land, other than
427 within the boundaries of any convertible lands, are depicted on plats and plans that comply with
428 the provisions of subsections A and B of ~~§ 55-79.58~~ 55.1-xxx. ~~The foreclosure of any mortgage,~~

429 ~~deed of trust, or other lien shall not be deemed, ex proprio vigore, to terminate the~~
430 ~~condominium.~~

431 **Drafting note: The last sentence is relocated to proposed § 55.1-xxx [§ 55-79.72:1],**
432 **which outlines how condominiums may be terminated.**

433 § ~~55-79.46~~ 55.1-xxx. Release of liens.

434 A. At the time of the conveyance to the first purchaser of ~~each~~ a condominium unit
435 following the recordation of the declaration, every mortgage, deed of trust, any other perfected
436 lien, or any mechanics' or materialmen's liens, affecting all of the condominium or a greater
437 portion ~~thereof of the condominium~~ than the condominium unit conveyed, shall be paid and
438 satisfied of record, or the declarant shall forthwith have ~~the said such~~ such condominium unit
439 released of record from all such liens not so paid and satisfied. The provisions of this subsection
440 shall not apply, however, to any withdrawable land in a contractable condominium, nor shall
441 any provision of this subsection be construed to prohibit the unit owners' association from
442 mortgaging or causing a deed of trust to be placed on any portion of the condominium within
443 which no units are located, so long as ~~any time limit~~ the period of declarant control specified
444 ~~pursuant to in~~ § ~~55-79.74~~ 55.1-xxx has expired, and so long as the bylaws authorize ~~the same~~
445 such action. This subsection ~~shall~~ does not apply to any lien on more than one condominium
446 unit in a condominium in which all units are restricted to nonresidential use and in which all unit
447 owners whose condominium units will be subject to such lien expressly agree to assume or take
448 subject ~~thereto~~ to such lien.

449 B. ~~In the event that~~ If any lien, other than a deed of trust or mortgage, becomes effective
450 against two or more condominium units subsequent to the creation of the condominium, any
451 unit owner may remove his condominium unit from that lien by payment of the amount
452 attributable to his condominium unit. Such amount shall be computed by reference to the
453 liability for common expenses appertaining to that condominium unit pursuant to subsection D
454 of § ~~55-79.83~~ 55.1-xxx. Subsequent to such payment, discharge, or other satisfaction, the unit
455 owner of that condominium unit shall be entitled to have that lien released as to his

456 condominium unit in accordance with the provisions of § ~~55-66.4~~ 55.1-xxx, and the unit owners'
457 association shall not assess, or have a valid lien against, that condominium unit for any portion
458 of the common expenses incurred in connection with that lien, notwithstanding anything to the
459 contrary in §§ ~~55-79.83~~ 55.1-xxx and ~~55-79.84~~ 55.1-xxx.

460 **Drafting note: In subsection A, the phrase "any time limit" is replaced with "the**
461 **period of declarant control" to provide clarity and consistency with the cross reference to**
462 **proposed § 55.1-xxx [§ 55-79.74]. Technical changes are made.**

463 § ~~55-79.47~~ 55.1-xxx. Description of condominium units.

464 After the creation of the condominium, no description of a condominium unit shall be
465 deemed vague, uncertain, or otherwise insufficient or infirm ~~which if it~~ sets forth the identifying
466 number of that unit, the name of the condominium, the name of the county or city ~~or county~~
467 wherein in which the condominium is situated, and either the deed book and page number where
468 the first page of the declaration is recorded ~~or else~~ the document number assigned to the
469 declaration by the clerk. Any such description shall be deemed to include the undivided interest
470 in the common elements appertaining to such unit even if such interest is not defined or referred
471 to therein in the description.

472 **Drafting note: Technical changes.**

473 § ~~55-79.48~~ 55.1-xxx. Execution of condominium instruments.

474 The declaration and bylaws, and any amendments to either made pursuant to § ~~55-79.71~~
475 55.1-xxx, shall be duly executed by or on behalf of all of the owners and lessees of the
476 submitted land. ~~But the~~ The phrase "owners and lessees" in ~~the preceding sentence~~ this section
477 and in § ~~55-79.63~~ 55.1-xxx does not include, in their capacity as such, any mortgagee, any
478 trustee or beneficiary under a deed of trust, any other lien holder, any person having an
479 equitable interest under any contract for the sale ~~and/or~~ or lease of a condominium unit, any
480 lessee whose leasehold interest does not extend to any portion of the common elements, any
481 person whose land is subject to an easement included in the condominium, or, in the case of a

482 leasehold condominium subject to any lease ~~or leases~~ executed before July 1, 1962, any lessor
483 of the submitted land who is not a declarant.

484 **Drafting note: The term "and/or," a grammatical shortcut that is inherently**
485 **ambiguous, is replaced with the word "or" to reflect its meaning in the sense of either or**
486 **both/all. The phrase "or leases" is stricken on the basis of § 1-227, which states that**
487 **throughout the Code any word used in the singular includes the plural. Technical changes**
488 **are made.**

489 § ~~55-79.49~~ 55.1-xxx. Recordation of condominium instruments.

490 All amendments and certifications of condominium instruments shall set forth the name
491 of the county or city ~~or county~~ in which the condominium is located, and the deed book and
492 page number where the first page of the declaration is recorded. All condominium instruments
493 and all amendments and certifications ~~thereof of such condominium instruments~~ shall be
494 recorded in every county and city ~~and county wherein in which~~ any portion of the condominium
495 is located. The condominium instruments, amendments, and certifications shall set forth the
496 name of the condominium and either the deed book and page number where the first page of the
497 declaration is recorded or the document number assigned to the declaration by the clerk.
498 ~~Wherever the phrase "city or county" appears in this chapter, the disjunctive shall be deemed to~~
499 ~~include the conjunctive and the singular shall be deemed to include the plural.~~

500 **Drafting note: The last sentence is stricken as unnecessary: throughout the Code,**
501 **the disjunctive "or" is used to mean either or both/all and § 1-227 states that throughout**
502 **the Code any word used in the singular includes the plural. Technical changes are made.**

503 § ~~55-79.50~~ 55.1-xxx. Construction of condominium instruments.

504 Except to the extent otherwise provided by the condominium instruments:

505 ~~(a)~~ 1. The terms defined in § ~~55-79.41~~ 55.1-xxx shall be deemed to have the meanings
506 therein specified wherever they appear in the condominium instruments unless the context
507 ~~otherwise~~ requires a different meaning.

508 ~~(b) 2.~~ To the extent that walls, floors ~~and/or, or~~ ceilings are designated as the boundaries
509 of the units or of any specified units, all lath, wallboard, plasterboard, plaster, paneling, tiles,
510 wallpaper, paint, and finished flooring and any other materials constituting any part of the
511 finished surfaces ~~thereof of such walls, floors, or ceilings, shall be deemed a~~ are part of such
512 units, while all other portions of such walls, floors ~~and/or, or~~ ceilings ~~shall be deemed~~ are a part
513 of the common elements.

514 ~~(e) 3.~~ If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or ~~any~~
515 other apparatus lies partially within and partially outside of the designated boundaries of a unit,
516 any portions ~~thereof~~ serving only that unit ~~shall be deemed~~ are a part of that unit, while any
517 portions ~~thereof~~ serving more than one unit or any portion of the common elements ~~shall be~~
518 ~~deemed~~ are a part of the common elements.

519 ~~(d) 4.~~ Subject to the provisions of ~~subsection (e) hereof~~ subdivision 3, all space, interior
520 partitions, and other fixtures and improvements within the boundaries of a unit ~~shall be deemed~~
521 are a part of that unit.

522 ~~(e) 5.~~ Any shutters, awnings, doors, windows, window boxes, doorsteps, porches,
523 balconies, patios ~~and any, or~~ other apparatus designed to serve a single unit, but located outside
524 the boundaries ~~thereof of such unit, shall be deemed a~~ are limited common ~~element~~ elements
525 appertaining to that unit exclusively; ~~provided, except~~ that if a single unit's electrical master
526 switch is located outside the designated boundaries of the unit, the switch and its cover ~~shall be~~
527 ~~deemed~~ are a part of the common elements.

528 **Drafting note: In proposed subdivision 2, the term "and/or," a grammatical**
529 **shortcut that is inherently ambiguous, is replaced with the word "or" to reflect its**
530 **meaning in the sense of either or both/all. Technical changes are made.**

531 ~~§ 55-79.51~~ 55.1-xxx. Complementarity of condominium instruments; controlling
532 construction.

533 The condominium instruments shall be construed together and shall be deemed to
534 incorporate one another to the extent that any requirement of this chapter as to the content of

535 one shall be deemed satisfied if the deficiency can be cured by reference to any of the others. In
536 the event of any conflict between the condominium instruments, the declaration shall control;
537 but particular provisions shall control more general provisions, except that a construction
538 ~~conformable~~ consistent with the statute shall in all cases control over any inconsistent
539 construction ~~inconsistent therewith~~.

540 **Drafting note: Technical change.**

541 § ~~55-79.52~~ 55.1-xxx. Validity of condominium instruments; discrimination prohibited.

542 A. All provisions of the condominium instruments shall be deemed severable, and any
543 unlawful provision ~~thereof of such condominium instruments~~ shall be void.

544 B. No provision of the condominium instruments shall be deemed void by reason of the
545 rule against perpetuities.

546 C. No restraint on alienation shall discriminate or be used to discriminate on any basis
547 prohibited under the Virginia Fair Housing Law (§ 36-96.1 et seq.).

548 D. Subject to the provisions of subsection C, the rule of property law known as the rule
549 restricting unreasonable restraints on alienation shall not be applied to defeat any provision of
550 the condominium instruments restraining the alienation of condominium units other than such
551 units as may be restricted to residential use only.

552 **Drafting note: Technical change.**

553 § ~~55-79.53~~ 55.1-xxx. Compliance with condominium instruments.

554 A. The declarant, every unit owner, and all those entitled to occupy a unit shall comply
555 with all lawful provisions of this chapter and all provisions of the condominium instruments.
556 Any lack of such compliance shall be grounds for an action or suit to recover sums due, for
557 damages or injunctive relief, or for any other remedy available at law or in equity, maintainable
558 by the unit owners' association; or by its executive ~~organ~~ board or any managing agent on behalf
559 of such association; or, in any proper case, by one or more aggrieved unit owners on their own
560 behalf or as a class action. A unit owners' association shall have standing to sue in its own name
561 for any claims or actions related to the common elements as provided in subsection B of § ~~55-~~

562 ~~79.80~~ 55.1-xxx. Except as provided in subsection B, the prevailing party shall be entitled to
563 recover reasonable attorney fees, costs expended in the matter, and interest on the judgment as
564 provided in § 8.01-382. This section ~~shall~~ does not preclude an action against the unit owners'
565 association and authorizes the recovery, by the prevailing party in any such action, of reasonable
566 attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-
567 382 in such actions.

568 B. In actions against a unit owner for nonpayment of assessments in which the unit
569 owner has failed to pay assessments levied by the unit owners' association on more than one unit
570 or such unit owner has had legal actions taken against him for nonpayment of any prior
571 assessment and the prevailing party is the association or its executive ~~organ~~ board or any
572 managing agent on behalf of the association, the prevailing party shall be awarded reasonable
573 attorney fees, costs expended in the matter, and interest on the judgment as provided in
574 subsection A, even if the proceeding is settled prior to judgment. The delinquent unit owner
575 shall be personally responsible for reasonable attorney fees and costs expended in the matter by
576 the unit owners' association, whether any judicial proceedings are filed.

577 C. The condominium instruments may provide for arbitration of disputes or other means
578 of alternative dispute resolution. Any such arbitration held in accordance with this subsection
579 shall be consistent with the provisions of this chapter and Chapter 21 (§ 8.01-577 et seq.) of
580 Title 8.01. The place of any such arbitration or alternative dispute resolution shall be in the
581 county or city in which the condominium is located, or as mutually agreed by the parties.

582 **Drafting note: In subsections A and B, the term "executive organ" is changed to**
583 **"executive board" for consistency with the term as it is defined in proposed § 55.1-xxx [§**
584 **55-79.41]. Technical changes are made.**

585 § ~~55-79.54~~ 55.1-xxx. Contents of declaration.

586 ~~(a)~~ A. The declaration for every condominium shall contain the following:

587 ~~(1)~~ 1. The name of the condominium, which name shall include the word
588 "condominium" or be followed by the words "a condominium."

- 589 ~~(2)~~2. The name of the county or city ~~or county~~ in which the condominium is located.
- 590 ~~(3)~~3. A legal description by metes and bounds of the land submitted ~~to~~ in accordance
- 591 with this chapter.
- 592 ~~(4)~~4. A description or delineation of the boundaries of the units, including the horizontal
- 593 (upper and lower) boundaries, if any, as well as the vertical (lateral or perimetric) boundaries.
- 594 ~~(5)~~5. A description or delineation of any limited common elements, other than those
- 595 ~~which that~~ are limited common elements by virtue of ~~subsection (e) subdivision 5~~ of § ~~55-79.50~~
- 596 55.1-xxx, showing or designating the unit or units to which each is assigned.
- 597 ~~(6)~~6. A description or delineation of all common elements not within the boundaries of
- 598 any convertible lands ~~which that~~ may subsequently be assigned as limited common elements,
- 599 together with a statement that (i) they may be so assigned and a description of the method
- 600 whereby by which any such assignments shall be made in accordance with the provisions of §
- 601 ~~55-79.57~~ 55.1-xxx or (ii) once assigned, the conditions under which they may be unassigned and
- 602 converted to common elements in accordance with § ~~55-79.57~~ 55.1-xxx.
- 603 ~~(7)~~7. The allocation to each unit of an undivided interest in the common elements in
- 604 accordance with the provisions of § ~~55-79.55~~ 55.1-xxx.
- 605 ~~(7a)~~8. A statement of the extent of the declarant's obligation to complete improvements
- 606 labeled "~~(NOT YET COMPLETED)~~" or to begin and complete improvements labeled "~~(NOT~~
- 607 ~~YET BEGUN)~~" on plats recorded pursuant to the requirements of this chapter. Such statement
- 608 shall be specific as to the type and quality of materials to be used, the size or capacity of the
- 609 improvements; when material, and the time by which such improvements shall be completed.
- 610 ~~(8)~~9. Such other matters as the declarant deems appropriate.
- 611 ~~(b)~~B. If the condominium contains any convertible land, the declaration shall also
- 612 contain the following:
- 613 ~~(1)~~1. A legal description by metes and bounds of each convertible land within the
- 614 condominium.

615 ~~(2)~~2. A statement of the maximum number of units that may be created within each such
616 convertible land.

617 ~~(3)~~3. A statement, with respect to each such convertible land, of the maximum
618 percentage of the aggregate land and floor area of all units that may be created ~~therein in such~~
619 convertible land that may be occupied by units not restricted exclusively to residential use. Such
620 statement is not required if none of the units on other portions of the submitted land are
621 restricted exclusively to residential use.

622 ~~(4)~~4. A statement of the extent to which any structure erected on any convertible land
623 will be compatible with structures on other portions of the submitted land in terms of quality of
624 construction, the principal materials to be used, and architectural style.

625 ~~(5)~~5. A description of all other improvements that may be made on each convertible
626 land within the condominium.

627 ~~(6)~~6. A statement that any units created within each convertible land will be
628 substantially identical to the units on other portions of the submitted land, or a statement
629 describing in detail what other types of units may be created ~~therein in such convertible land~~.

630 ~~(7)~~7. A description of the declarant's reserved right, if any, to create limited common
631 elements within any convertible land, ~~and/or or~~ to designate common elements ~~therein which in~~
632 such convertible land that may subsequently be assigned as limited common elements, in terms
633 of the types, sizes, and maximum number of such elements within each such convertible land.

634 ~~Provided, that plats~~ Plats and plans may be recorded ~~with as exhibits to~~ the declaration
635 ~~and identified therein~~ to supplement information furnished pursuant to ~~items (1), (4), (5), (6),~~
636 ~~and (7), and that item (3) need not be complied with if none of the units on other portions of the~~
637 ~~submitted land are restricted exclusively to residential use~~ subdivisions 1, 4, 5, 6, and 7.

638 ~~(e)~~C. If the condominium is an expandable condominium, the declaration shall also
639 contain the following:

640 ~~(1)~~1. The explicit reservation of an option to expand the condominium.

641 ~~(2)~~2. A statement of any limitations on that option, including, ~~without limitation,~~ a
642 statement as to whether the consent of any unit owners shall be required, and, if so, a statement
643 as to the method ~~whereby by which~~ such consent shall be ascertained, or a statement that there
644 are no such limitations.

645 ~~(3)~~3. A time limit, not exceeding 10 years ~~from~~ after the recording of the declaration,
646 upon which the option to expand the condominium shall expire, together with a statement of the
647 circumstances, if any, ~~which that~~ will terminate that option prior to the expiration of the time
648 limit so specified. After the expiration of any period of declarant control reserved pursuant to
649 subsection A of § ~~55-79.74~~ 55.1-xxx, such time limit may be extended by an amendment to the
650 declaration made pursuant to § ~~55-79.74~~ 55.1-xxx.

651 ~~(4)~~4. A legal description by metes and bounds of all land that may be added to the
652 condominium, henceforth referred to as "additional land."

653 ~~(5)~~5. A statement as to whether, if any of the additional land is added to the
654 condominium, all of it or any particular portion of it must be added, and, if not, a statement of
655 any limitations as to what portions may be added, or a statement that there are no such
656 limitations.

657 ~~(6)~~6. A statement as to whether portions of the additional land may be added to the
658 condominium at different times, together with any limitations fixing the boundaries of those
659 portions by legal descriptions setting forth the metes and bounds ~~thereof and/or of such portions~~
660 or regulating the order in which they may be added to the condominium.

661 ~~(7)~~7. A statement of any limitations as to the locations of any improvements that may be
662 made on any portions of the additional land added to the condominium, or a statement that no
663 assurances are made in that regard.

664 ~~(8)~~8. A statement of the maximum number of units that may be created on the additional
665 land. If portions of the additional land may be added to the condominium and the boundaries of
666 those portions are fixed in accordance with ~~item (6) subdivision 6~~, the declaration shall also
667 state the maximum number of units that may be created on each such portion added to the

668 condominium. If portions of the additional land may be added to the condominium and the
669 boundaries of those portions are not fixed in accordance with ~~item (6) subdivision 6~~, then the
670 declaration shall also state the maximum number of units per acre that may be created on any
671 such portion added to the condominium.

672 ~~(9)~~ 9. A statement, with respect to the additional land and to any portion ~~or portions~~
673 ~~thereof~~ of such additional land that may be added to the condominium, of the maximum
674 percentage of the aggregate land and floor area of all units that may be created ~~thereon~~ on such
675 additional land that may be occupied by units not restricted exclusively to residential use. Such
676 statement is not required if none of the units on the submitted land are restricted exclusively to
677 residential use.

678 ~~(10)~~ 10. A statement of the extent to which any structures erected on any portion of the
679 additional land added to the condominium will be compatible with structures on the submitted
680 land in terms of quality of construction, the principal materials to be used, and architectural
681 style, or a statement that no assurances are made in those regards.

682 ~~(11)~~ 11. A description of all other improvements that will be made on any portion of the
683 additional land added to the condominium, or a statement of any limitations as to what other
684 improvements may be made ~~thereon~~ on such additional land, or a statement that no assurances
685 are made in that regard.

686 ~~(12)~~ 12. A statement that any units created on any portion of the additional land added to
687 the condominium will be substantially identical to the units on the submitted land, or a
688 statement of any limitations as to what types of units may be created ~~thereon~~ on such additional
689 land, or a statement that no assurances are made in that regard.

690 ~~(13)~~ 13. A description of the declarant's reserved right, if any, to create limited common
691 elements within any portion of the additional land added to the condominium, ~~and/or~~ or to
692 designate common elements ~~therein~~ which in such additional land that may subsequently be
693 assigned as limited common elements, in terms of the types, sizes, and maximum number of

694 such elements within each such portion, or a statement that no assurances are made in those
695 regards.

696 ~~Provided, that plats~~ Plats and plans may be recorded ~~with as exhibits to~~ the declaration
697 ~~and identified therein~~ to supplement information furnished pursuant to ~~items (4), (5), (6), (7),~~
698 ~~(10), (11), (12), and (13), and that item (9) need not be complied with if none of the units on the~~
699 ~~submitted land are restricted exclusively to residential use~~ subdivisions 4, 5, 6, 7, 10, 11, 12, and
700 13.

701 ~~(d)~~ D. If the condominium is a contractable condominium, the declaration shall also
702 contain the following:

703 ~~(1)~~ 1. The explicit reservation of an option to contract the condominium.

704 ~~(2)~~ 2. A statement of any limitations on that option, including, ~~without limitation,~~ a
705 statement as to whether the consent of any unit owners shall be required, and, if so, a statement
706 as to the method whereby such consent shall be ascertained; or a statement that there are no
707 such limitations.

708 ~~(3)~~ 3. A time limit, not exceeding 10 years ~~from~~ after the recording of the declaration,
709 upon which the option to contract the condominium shall expire, together with a statement of
710 the circumstances, if any, ~~which that~~ will terminate that option prior to the expiration of the time
711 limit so specified.

712 ~~(4)~~ 4. A legal description by metes and bounds of all land that may be withdrawn from
713 the condominium, ~~henceforth hereinafter~~ referred to as "withdrawable land."

714 ~~(5)~~ 5. A statement as to whether portions of the withdrawable land may be withdrawn
715 from the condominium at different times, together with any limitations fixing the boundaries of
716 those portions by legal descriptions setting forth the metes and bounds ~~thereof and/or or~~
717 regulating the order in which they may be withdrawn from the condominium.

718 ~~(6)~~ 6. A legal description by metes and bounds of all of the submitted land to which the
719 option to contract the condominium does not extend. This subdivision shall not be construed in

720 derogation of any right the declarant may have to terminate the condominium in accordance
721 with the provisions of § 55.1-xxx [§ 55-79.72:1].

722 ~~Provided, that plats~~ Plats may be recorded ~~with~~ as exhibits to the declaration ~~and~~
723 ~~identified therein~~ to supplement information furnished pursuant to ~~items (4), (5), and (6), and~~
724 ~~that item (6) shall not be construed in derogation of any right the declarant may have to~~
725 ~~terminate the condominium in accordance with the provisions of § 55-79.72:1 subdivisions 4, 5,~~
726 and 6.

727 ~~(e)~~ E. If the condominium is a leasehold condominium, then with respect to any ground
728 lease or other leases the expiration or termination of which will or may terminate or contract the
729 condominium, the declaration shall set forth the county or city ~~or county wherein the same are~~
730 in which such lease is recorded and the deed book and page number where the first page of each
731 such lease is recorded; and the declaration shall also contain the following:

732 ~~(1)~~ 1. The date upon which each such lease is due to expire.

733 ~~(2)~~ 2. A statement as to whether any land ~~and/or~~ or improvements will be owned by the
734 unit owners in fee simple; and, if so, either ~~(a)~~ (i) a description of the same, including ~~without~~
735 ~~limitation~~ a legal description by metes and bounds of any such land, or ~~(b)~~ (ii) a statement of
736 any rights the unit owners shall have to remove such improvements within a reasonable time
737 after the expiration or termination of the lease ~~or leases~~ involved, or a statement that they shall
738 have no such rights.

739 ~~(3)~~ 3. A statement of the rights the unit owners shall have to redeem ~~the any~~ any reversion ~~or~~
740 ~~any of the reversions~~, or a statement that they shall have no such rights.

741 ~~Provided, that after~~ After the recording of the declaration, no lessor who executed ~~the~~
742 ~~same such declaration~~, and no successor in interest to such lessor, shall have any right or power
743 to terminate any part of the leasehold interest of any unit owner who makes timely payment of
744 his share of the rent to the person ~~or persons~~ designated in the declaration for the receipt of such
745 rent and who otherwise complies with all covenants ~~which that~~, if violated, would entitle the
746 lessor to terminate the lease. Acquisition or reacquisition of such a leasehold interest by the

747 owner of the reversion or remainder ~~shall~~ does not cause a merger of the leasehold and fee
748 simple interests unless all leasehold interests in the condominium are thus acquired or
749 reacquired.

750 ~~(f)~~ F. Wherever this section requires a legal description by metes and bounds of land that
751 is submitted pursuant to this chapter or that may be added to or withdrawn from the
752 condominium, such requirement shall be deemed satisfied by any legally sufficient description
753 and shall be deemed to require a legally sufficient description of any easements that are
754 submitted pursuant to this chapter or that may be added to or withdrawn from the condominium,
755 as ~~the case may be~~ appropriate. In the case of each such easement, the declaration shall contain
756 the following:

757 ~~(1)~~ 1. A description of the permitted use or uses.

758 ~~(2)~~ 2. If less than all of those entitled to the use of all of the units may utilize such
759 easement, a statement of the relevant restrictions and limitations on utilization.

760 ~~(3)~~ 3. If any persons other than those entitled to the use of the units may utilize such
761 easement, a statement of the rights of others to utilization of the ~~same~~ easement.

762 ~~(g)~~ G. Wherever this section requires a legal description by metes and bounds of land
763 that is submitted pursuant to this chapter or that may be added to or withdrawn from the
764 condominium, an added requirement shall be a separate legally sufficient description of all lands
765 in which the unit owners shall or may be tenants in common or joint tenants with any other
766 persons; and a separate legally sufficient description of all lands in which the unit owners shall
767 or may be life tenants. No units shall be situated on any such lands, however, and the
768 declaration shall describe the nature of the unit owners' estate ~~therein in such lands~~. No such
769 lands shall be shown on the same plat or plats showing other portions of the condominium; but
770 shall be shown instead on separate plats.

771 **Drafting note: Language following proposed subdivision B 7 is stricken and**
772 **relocated to proposed subdivision B 3 because it provides an exception that only applies to**
773 **that subdivision. In proposed subdivisions B 7, C 6, C 13, D 5, and E 2, the term "and/or,"**

774 a grammatical shortcut that is inherently ambiguous, is replaced with the word "or" to
775 reflect its meaning in the sense of either or both/all. In proposed subdivisions C 2, D 2, and
776 E 2, the phrase "without limitation" is stricken after the term "including" on the basis of §
777 1-218, which states that throughout the Code "'Includes' means includes, but not limited
778 to." Language following proposed subdivision C 13 is stricken and relocated to proposed
779 subdivision C 9 because it provides an exception that only applies to that subdivision.
780 Language following proposed subdivision D 6 is stricken and relocated to proposed
781 subdivision D 6 because it provides an exception that only applies to that subdivision.
782 Language following proposed subdivisions C 13 and D 6 is also clarified by stating that the
783 plats may be recorded as "exhibits" to the declaration, which directs the clerks to record
784 such documents with the declaration rather than assigning them a separate document
785 number. In proposed subdivision E 2, the phrase "or leases" is stricken following the word
786 "lease," and in the language following proposed subdivision E 3, the phrase "or persons"
787 is stricken following the word "person" on the basis of § 1-227, which states that
788 throughout the Code any word used in the singular includes the plural. Technical changes
789 are made.

790 § ~~55-79.55~~ 55.1-xxx. Allocation of interests in the common elements.

791 ~~(a)~~ A. The declaration may allocate to each unit depicted on plats and plans that comply
792 with subsections A and B of § ~~55-79.58~~ 55.1-xxx an undivided interest in the common elements
793 proportionate to either the size or par value of each unit. If par value is stated in terms of dollars,
794 that statement shall not be deemed to reflect or control the sales price or fair market value of any
795 unit, and no opinion, appraisal, or fair market transaction at a different figure shall affect the par
796 value of any unit or any undivided interest in the common elements, voting rights in the unit
797 owners' association, or liability for common expenses assigned on the basis of such par value.

798 ~~(b)~~ Otherwise, B. If the basis for allocation provided in subsection A is not used, then the
799 declaration shall allocate to each such unit an equal undivided interest in the common elements,
800 subject to the following exception: Each convertible space so depicted shall be allocated an

801 undivided interest in the common elements proportionate to the size of each such space, vis-a-
802 vis the aggregate size of all units so depicted, while the remaining undivided interest in the
803 common elements shall be allocated equally to the other units so depicted.

804 ~~(e)~~ C. The undivided interests in the common elements allocated in accordance with
805 subsection ~~(a)~~ A or ~~(b)~~ hereof B shall add up to 1 if stated as fractions or ~~100%~~ 100 percent if
806 stated as percentages.

807 ~~(d)~~ D. If, in accordance with subsection ~~(a) or (b) hereof A or B~~, an equal undivided
808 interest in the common elements is allocated to each unit, the declaration may ~~simply~~ state that
809 fact and need not express the fraction or percentage so allocated.

810 ~~(e)~~ Otherwise, E. Unless an equal undivided interest in the common elements is allocated
811 to each unit, the undivided interest allocated to each unit in accordance with subsection ~~(a) or~~
812 ~~(b) hereof A or B~~ shall be reflected by a table in the declaration, or by an exhibit ~~or schedule~~
813 accompanying to the declaration ~~and recorded simultaneously therewith~~, containing three
814 columns. The first column shall identify the units, listing them serially or grouping them
815 together in the case of units to which identical undivided interests are allocated. Corresponding
816 figures in the second and third columns shall set forth the respective areas or par values of those
817 units and the fraction or percentage of undivided interest in the common elements allocated
818 thereto to such units.

819 ~~(f)~~ F. Except to the extent otherwise expressly provided by this chapter, the undivided
820 interest in the common elements allocated to any unit shall not be altered, and any purported
821 transfer, encumbrance, or other disposition of that interest without the unit to which it appertains
822 ~~shall be is~~ void.

823 ~~(g)~~ G. The common elements shall not be subject to any suit for partition until and unless
824 the condominium is terminated.

825 **Drafting note: Language that is substantive content is relocated from the definition**
826 **of "par value" in proposed § 55.1-xxx [55-79.41] to proposed subsection A of this section.**
827 **Technical changes are made.**

828 § ~~55-79.56~~ 55.1-xxx. Reallocation of interests in common elements.

829 ~~(a)~~ A. If a condominium contains any convertible land or is an expandable
830 condominium, then the declaration shall not allocate undivided interests in the common
831 elements on the basis of par value unless the declaration:

832 ~~(1)~~ 1. Prohibits the creation of any units not substantially identical to the units depicted
833 on the plats and plans recorded pursuant to subsections A and B of § ~~55-79.58~~, 55.1-xxx; or

834 ~~(2)~~ 2. Prohibits the creation of any units not described pursuant to subdivision ~~(b)~~ (6) B 6
835 of § ~~55-79.54~~ (in 55.1-xxx, in the case of convertible lands), and subdivision ~~(c)~~ (12) C 12 of §
836 ~~55-79.54~~ (in 55.1-xxx, in the case of additional land), and contains from the outset a statement
837 of the par value that shall be assigned to every such unit that may be created.

838 ~~(b)~~ B. Interests in the common elements shall not be allocated to any units to be created
839 within any convertible land or within any additional land until plats and plans depicting the
840 same are recorded pursuant to subsection C of § ~~55-79.58~~ 55.1-xxx. But simultaneously with the
841 recording of such plats and plans, the declarant shall execute and record an amendment to the
842 declaration reallocating undivided interests in the common elements so that the units depicted
843 on such plats and plans shall be allocated undivided interests in the common elements on the
844 same basis as the units depicted on the plats and plans recorded simultaneously with the
845 declaration pursuant to subsections A and B of § ~~55-79.58~~ 55.1-xxx.

846 ~~(c)~~ C. If all of a convertible space is converted into common elements, including ~~without~~
847 ~~limitation~~ limited common elements, then the undivided interest in the common elements
848 appertaining to such space shall ~~thenceforth~~ then appertain to the remaining units, being
849 allocated among them in proportion to their undivided interests in the common elements. The
850 principal officer of the unit owners' association, or such other officer ~~or officers~~ as the
851 condominium instruments may specify, shall forthwith prepare, execute, and record an
852 amendment to the declaration reflecting the reallocation of undivided interests produced ~~thereby~~
853 by such conversion.

854 ~~(d)~~D. In the case of a leasehold condominium, if the expiration or termination of any
855 lease causes a contraction of the condominium~~which that~~ reduces the number of units, then the
856 undivided interest in the common elements appertaining to any units~~thereby~~ withdrawn from
857 the condominium shall~~thenceforth then~~ appertain to the remaining units, being allocated among
858 them in proportion to their undivided interests in the common elements. The principal officer of
859 the unit owners' association, or such other officer~~or officers~~ as the condominium instruments
860 may specify, shall forthwith prepare, execute, and record an amendment to the declaration
861 reflecting the reallocation of undivided interests produced~~thereby by such contraction~~.

862 **Drafting note: In proposed subsection C, the phrase "without limitation" is**
863 **stricken following the term "including" on the basis of § 1-218, which states that**
864 **throughout the Code "'Includes' means includes, but not limited to." In subsections C and**
865 **D, the phrase "or officers" is stricken after the term "officer," on the basis of § 1-227,**
866 **which states that throughout the Code any word used in the singular includes the plural.**
867 **Technical changes are made.**

868 §~~55-79.57~~ 55.1-xxx. Assignments of limited common elements; conversion to common
869 element.

870 A. All assignments and reassignments of limited common elements shall be reflected by
871 the condominium instruments. No limited common element shall be assigned or reassigned
872 except in accordance with the provisions of this chapter. No amendment to any condominium
873 instrument shall alter any rights or obligations with respect to any limited common elements
874 without the consent of all unit owners adversely affected~~thereby by such amendment~~ as
875 evidenced by their execution of such amendment, except to the extent that the condominium
876 instruments expressly provided otherwise prior to the first assignment of that limited common
877 element.

878 B. Unless expressly prohibited by the condominium instruments, a limited common
879 element may be reassigned or converted to a common element upon written application of the
880 unit owners concerned to the principal officer of the unit owners' association, or to such other

881 officer ~~or officers~~ as the condominium instruments may specify. The officer ~~or officers~~ to whom
882 such application is duly made shall forthwith prepare and execute an amendment to the
883 declaration reassigning all rights and obligations with respect to the limited common element
884 involved. Such amendment shall be executed by all of the ~~unit owner or~~ unit owners ~~of the unit~~
885 ~~or units~~ concerned and recorded by an officer of the unit owners' association or his agent
886 following payment by the unit ~~owner or unit~~ owners of the ~~unit or~~ units concerned of all
887 reasonable costs for the preparation, acknowledgment, and recordation ~~thereof of such~~
888 amendment. The amendment ~~shall become~~ is effective when recorded.

889 C. A common element not previously assigned as a limited common element shall be so
890 assigned only ~~in pursuance of~~ pursuant to subdivision ~~(a) (6) A 6~~ of § ~~55-79.54~~ 55.1-xxx. The
891 amendment to the declaration making such an assignment shall be prepared and executed by the
892 declarant, the principal officer of the unit owners' association, or by such other officer ~~or~~
893 ~~officers~~ as the condominium instruments may specify. Such amendment shall be recorded by the
894 declarant or his agent, without charge to any unit owner, or by an officer of the unit owners'
895 association or his agent following payment by all of the unit ~~owner or unit~~ owners of the ~~unit or~~
896 units concerned of all reasonable costs for the preparation, acknowledgment, and recordation
897 thereof of such amendment. The amendment ~~shall become~~ is effective when recorded, and the
898 recordation ~~thereof of such amendment~~ shall be conclusive evidence that the method prescribed
899 pursuant to subdivision ~~(a) (6) A 6~~ of § ~~55-79.54~~ 55.1-xxx was adhered to. A copy of the
900 amendment shall be delivered to the unit ~~owner or unit~~ owners of the ~~unit or~~ units concerned. If
901 executed by the declarant, such an amendment recorded prior to July 1, 1983, shall not be
902 invalid because it was not prepared by an officer of the unit owners' association.

903 D. If the declarant does not prepare and record an amendment to the declaration to effect
904 the assignment of common elements as limited common elements in accordance with rights
905 reserved in the condominium instruments, but has reflected an intention to make such
906 assignments in deeds conveying units, then the principal officer of the unit owners' association

907 | may prepare, execute, and record such an amendment at any time after the declarant ceases to be
908 | a unit owner.

909 | E. The declarant may unilaterally record an amendment to the declaration converting a
910 | limited common element appurtenant to a unit owned by the declarant into a common element
911 | as long as the declarant continues to own the unit.

912 | **Drafting note: In subsections B and C, the phrase "or officers" is stricken after the**
913 | **term "officer," the phrase "or unit owners" is stricken after the term "unit owner," and**
914 | **the phrase "or units" is stricken after the term "unit" on the basis of § 1-227, which states**
915 | **that throughout the Code any word used in the singular includes the plural. Technical**
916 | **changes are made.**

917 | § ~~55-79.58~~ 55.1-xxx. Contents of plats and plans.

918 | A. There shall be recorded simultaneously with the declaration one or more plats of
919 | survey showing the location and dimensions of the submitted land, the location and dimensions
920 | of any convertible lands within the submitted land, the location and dimensions of any existing
921 | improvements, the intended location and dimensions of any contemplated improvements ~~which~~
922 | that are to be located on any portion of the submitted land other than within the boundaries of
923 | any convertible lands, and, to the extent feasible, the location and dimensions of all easements
924 | appurtenant to the submitted land or otherwise ~~submitted~~ subject to this chapter as a part of the
925 | common elements. If the submitted land is not contiguous, then the plats shall indicate the
926 | distances between the parcels constituting the submitted land. The plats shall label every
927 | convertible land as a convertible land, and if there is more than one such land, the plats shall
928 | label each such land with one or more letters ~~and/or~~ or numbers different from those designating
929 | any other convertible land and different also from the identifying number of any unit. The plats
930 | shall show the location and dimensions of any withdrawable lands, and shall label each such
931 | land as a withdrawable land. The plats shall show the location and dimensions of any additional
932 | lands and shall label each such land as an additional land. If, with respect to any portion ~~or~~
933 | portions, but less than all, of the submitted land, the unit owners are to own only an estate for

934 | years, the plats shall show the location and dimensions of any such ~~portions~~ portion, and shall
935 | label each such portion as a leased land. If there is more than one withdrawable land, or more
936 | than one leased land, the plats shall label each such land with one or more letters ~~and/or~~ or
937 | numbers different from those designating any convertible land or other withdrawable or leased
938 | land, and different also from the identifying number of any unit. The plats shall show all
939 | easements to which the submitted land or any portion ~~thereof~~ of such submitted land is subject,
940 | and shall show the location and dimensions of all such easements to the extent feasible. The
941 | plats shall also show all encroachments by or on any portion of the condominium. In the case of
942 | any improvements located or to be located on any portion of the submitted land other than
943 | within the boundaries of any convertible lands, the plats shall indicate which, if any, have not
944 | been begun by the use of the phrase "~~(NOT YET BEGUN);~~" and which, if any, have been begun
945 | but have not been substantially completed by the use of the phrase "~~(NOT YET~~
946 | ~~COMPLETED);~~" In the case of any units the vertical boundaries of which lie wholly or partially
947 | outside of structures for which plans pursuant to subsection B are simultaneously recorded, the
948 | plats shall show the location and dimensions of such vertical boundaries to the extent that they
949 | are not shown on such plans, and the units or portions thereof thus depicted shall bear their
950 | identifying numbers. Each plat shall be certified in a recorded document as to its accuracy and
951 | compliance with the provisions of this subsection by a licensed land surveyor, and the ~~said~~
952 | surveyor shall certify in such document or on the face of the plat that all units or portions
953 | thereof of such units depicted ~~thereon~~ on such plat pursuant to the preceding sentence of this
954 | subsection have been substantially completed. The specification within this subsection of items
955 | that shall be shown on the plats shall not be construed to mean that the plats shall not also show
956 | all other items customarily shown or hereafter required for land title surveys.

957 | B. ~~There~~ Plans shall also be recorded, ~~simultaneously~~ with the declaration, ~~plans of,~~
958 | Such plans shall show every structure ~~which that~~ contains or constitutes all or part of any unit ~~or~~
959 | units; and ~~which that~~ is located on any portion of the submitted land other than within the
960 | boundaries of any convertible lands. The plans shall show the location and dimensions of the

961 vertical boundaries of each unit to the extent that such boundaries lie within or coincide with the
962 boundaries of such structures, and the units or portions ~~thereof thus~~ of the submitted units so
963 depicted shall bear their identifying numbers. In addition, each convertible space ~~thus so~~
964 depicted shall be labeled ~~a~~ as convertible space. The horizontal boundaries of each unit having
965 horizontal boundaries shall be identified on the plans with reference to established datum.
966 Unless the condominium instruments expressly provide otherwise, it shall be presumed that in
967 the case of any unit not wholly contained within or constituting one or more such structures, the
968 horizontal boundaries thus identified extend, in the case of each such unit, at the same elevation
969 with regard to any part of such unit, lying outside of such structures, subject to the following
970 exception: In the case of any such unit ~~which that~~ does not lie over any other unit other than
971 basement units, it shall be presumed that the lower horizontal boundary, if any, of that unit lies
972 at the level of the ground with regard to any part of that unit lying outside of such structures.
973 The plans shall be certified on their face or in another recorded document as to their accuracy
974 and compliance with the provisions of this subsection by a licensed architect, licensed engineer,
975 or licensed land surveyor, and ~~the said such~~ architect, engineer, or land surveyor shall certify on
976 the plans or in the recorded document that all units or portions ~~thereof of the submitted units~~
977 depicted ~~thereon on such plans~~ have been substantially completed.

978 C. When converting all or any portion of any convertible land, or adding additional land
979 to an expandable condominium, the declarant shall record, with regard to any structures on the
980 land being converted, or added, either plats of survey conforming to the requirements of
981 subsection A and plans conforming to the requirements of subsection B, or certifications,
982 conforming to the certification requirements of ~~said such~~ subsections, of plats and plans
983 previously recorded pursuant to § ~~55-79.59~~ 55.1-xxx.

984 D. Notwithstanding the provisions of ~~subsection subsections~~ A and B, a time-share
985 interest in a unit ~~which that~~ has been subjected to a time-share instrument pursuant to § ~~55-367~~
986 55.1-xxx may be conveyed prior to substantial completion of that unit if (i) a completion bond
987 has been filed in compliance with subsection B of § ~~55-79.58:1~~ 55.1-xxx and remains in full

988 force and effect until the unit is certified as substantially complete in accordance with
989 subsections A and B and (ii) the settlement agent or title insurance company insuring the time-
990 share estate in the unit certifies to the purchaser in writing, based on information provided by
991 the Common Interest Community Board, that the bond has been filed with the Common Interest
992 Community Board.

993 E. When converting all or any portion of any convertible space into one or more units
994 ~~and/or or~~ limited common elements, the declarant shall record, with regard to the structure or
995 ~~portion thereof of such structure~~ constituting that convertible space, plans showing the location
996 and dimensions of the vertical boundaries of each unit ~~and/or or~~ limited common elements
997 formed out of such space. Such plans shall be certified as to their accuracy and compliance with
998 the provisions of this subsection by a licensed architect, licensed engineer, or licensed land
999 surveyor.

1000 F. For the purposes of subsections A, B, and C, all provisions and requirements relating
1001 to units shall be deemed equally applicable to limited common elements. The limited common
1002 elements shall be labeled as such, and each limited common element depicted on the plats and
1003 plans shall ~~bear show~~ the identifying number ~~or numbers~~ of the unit ~~or units~~ to which it is
1004 assigned, if it has been assigned, unless the provisions of ~~subsection (e) subdivision 5~~ of § ~~55-~~
1005 ~~79.50 55.1-xxx~~ make such designations unnecessary.

1006 **Drafting note: In subsections A and E, the term "and/or," a grammatical shortcut**
1007 **that is inherently ambiguous, is replaced with the word "or" to reflect its meaning in the**
1008 **sense of either or both/all. In subsection F, the words "or numbers" and "or units" are**
1009 **stricken on the basis of § 1-227, which states that throughout the Code any word used in**
1010 **the singular includes the plural. Technical changes are made.**

1011 § ~~55-79.58:1 55.1-xxx~~. Bond to insure completion of improvements.

1012 A. The declarant shall file with the Common Interest Community Board a bond entered
1013 into by the declarant in the sum of 100 percent of the estimated cost of completion, to the extent
1014 of the declarant's obligation as stated in the declaration, of all improvements to the common

1015 elements of the condominium labeled in the plat or plats as "~~(NOT YET COMPLETED)~~" or
1016 "~~(NOT YET BEGUN)~~" located upon submitted land and which the declarant reasonably
1017 believes will not be substantially complete at the time of conveyance of the first condominium
1018 unit. Such bond shall be conditioned upon the faithful performance of the declarant's obligation
1019 to complete ~~said such~~ improvements in strict conformity with the plans and specifications for
1020 the same as described in the declaration.

1021 B. The declarant shall file with the Common Interest Community Board a bond entered
1022 into by the declarant in the sum of 100 percent of the estimated cost of completion of a unit in
1023 which a time-share interest is conveyed before the unit has been certified as substantially
1024 complete in accordance with subsections A and B of ~~§ 55-79.58~~ § 55.1-xxx. The bond required by
1025 this subsection shall be conditioned upon the faithful performance of the declarant's obligation
1026 to complete ~~said such~~ improvements in strict conformity with the plans and specifications for
1027 the same as described in the declaration.

1028 C. All bonds required ~~herein in this section~~ shall be executed by a surety company
1029 authorized to transact business in the Commonwealth ~~of Virginia~~ or by such other surety as is
1030 satisfactory to the Board.

1031 D. The Board may promulgate reasonable regulations ~~which that~~ govern the return of
1032 bonds submitted in accordance with this section.

1033 **Drafting note: Technical changes.**

1034 § 55-79.59. Preliminary recordation of plats and plans.

1035 Plats and plans previously recorded pursuant to subsections A, B, and C of § 55-79.54
1036 ~~(a), (b) and (c)~~ § 55.1-xxx may be used in lieu of new plats and plans to satisfy in whole or in part
1037 the requirements of subsection B of § 55-79.56 ~~(b)~~ § 55.1-xxx, subsection B of § 55-79.61 ~~B~~
1038 ~~and/or § 55-79.63~~ § 55.1-xxx, or § 55.1-xxx if certifications ~~thereof of such plats and plans~~ are
1039 recorded by the declarant in accordance with subsections A and B of § 55-79.58 ~~A and B~~ § 55.1-
1040 xxx; and if such certifications are recorded, the plats and plans ~~which that~~ they certify shall be
1041 deemed recorded pursuant to subsection C of § 55-79.58 ~~C~~ § 55.1-xxx within the meaning of ~~the~~

1042 ~~three sections aforesaid~~ §§ 55.1-xxx [§ 55-79.56], 55.1-xxx [§ 55-79.61], and 55.1-xxx [§ 55-
1043 79.63]. All condominium instruments for condominiums created prior to July 1, 1991, are
1044 hereby validated notwithstanding that the plats were prerecorded as if in compliance with this
1045 section and not recorded with amendments converting convertible land or adding additional land
1046 if the plats or subsequent amendments contained the required certifications.

1047 **Drafting note: Technical changes.**

1048 § ~~55-79.60~~ 55.1-xxx. Easement for encroachments.

1049 To the extent that any unit or common element encroaches on any other unit or common
1050 element, whether by reason of any deviation from the plats and plans in the construction, repair,
1051 renovation, restoration, or replacement of any improvement, or by reason of the settling or
1052 shifting of any land or improvement, a valid easement for such encroachment shall exist. The
1053 purpose of this section is to protect the unit owners, except in cases of willful and intentional
1054 misconduct by them or their agents or employees, and not to relieve the declarant or any
1055 contractor, subcontractor, or materialman of any liability which any of them may have by reason
1056 of any failure to adhere strictly to the plats and plans.

1057 **Drafting note: Technical change.**

1058 § ~~55-79.61~~ 55.1-xxx. Conversion of convertible lands.

1059 A. The declarant may convert all or any portion of any convertible land into one or more
1060 units ~~and/or or~~ limited common elements subject to any restrictions and limitations ~~which that~~
1061 the condominium instruments may specify. Any such conversion shall be deemed to have
1062 occurred at the time of the recordation of appropriate instruments pursuant to subsection B of
1063 this section and subsection C of § ~~55-79.58~~ 55.1-xxx.

1064 B. Simultaneously with the recording of plats and plans pursuant to subsection C of §
1065 ~~55-79.58~~ 55.1-xxx, the declarant shall prepare, execute, and record an amendment to the
1066 declaration describing the conversion. Such amendment shall assign an identifying number to
1067 each unit formed out of a convertible land and shall reallocate undivided interests in the
1068 common elements in accordance with subsection ~~(b)~~ B of § ~~55-79.56~~ 55.1-xxx. Such

1069 amendment shall describe or delineate ~~the~~ any limited common elements formed out of the
1070 convertible land, showing or designating the unit ~~or units~~ to which each is assigned.

1071 C. All convertible lands shall be deemed a part of the common elements except for such
1072 portions ~~thereof~~ of such convertible lands as are converted in accordance with the provisions of
1073 this section. Until the expiration of the period during which conversion may occur or until actual
1074 conversion, whichever occurs first, the declarant alone shall be liable for real estate taxes
1075 assessed against the convertible land and any improvements ~~thereon~~ on such convertible land
1076 and all other expenses in connection with that real estate, and no other unit owner and no other
1077 portion of the condominium shall be subject to a claim for payment of those taxes or expenses,
1078 and, unless the declaration provides otherwise, any income or proceeds from the convertible
1079 land and any improvements ~~thereon~~ on such convertible land shall inure to the declarant. No
1080 such conversion shall occur after 10 years from the recordation of the declaration, or such
1081 shorter period of time as the declaration may specify.

1082 **Drafting note: In subsection A, the term "and/or," a grammatical shortcut that is**
1083 **inherently ambiguous, is replaced with the word "or" to reflect its meaning in the sense of**
1084 **either or both/all. In subsection B, the phrase "or units" is stricken following the term**
1085 **"unit" on the basis of § 1-227, which states that throughout the Code any word used in the**
1086 **singular includes the plural. Technical changes are made.**

1087 § ~~55-79.62~~ 55.1-xxx. Conversion of convertible spaces.

1088 ~~(a)~~ A. The declarant may convert all or any portion of any convertible space into one or
1089 more units ~~and/or or~~ common elements, including, ~~without limitation,~~ limited common
1090 elements, subject to any restrictions and limitations ~~which that~~ the condominium instruments
1091 may specify. Any such conversion shall be deemed to have occurred at the time of the
1092 recordation of appropriate instruments pursuant to subsection ~~(b) hereof~~ B and subsection B of §
1093 ~~55-79.58~~ 55.1-xxx.

1094 ~~(b)~~ B. Simultaneously with the recording of plats and plans pursuant to subsection E of §
1095 ~~55-79.58~~ 55.1-xxx, the declarant shall prepare, execute, and record an amendment to the

1096 declaration describing the conversion. Such amendment shall assign an identifying number to
1097 each unit formed out of a convertible space and shall allocate to each unit a portion of the
1098 undivided interest in the common elements appertaining to that space. Such amendment shall
1099 describe or delineate ~~the any~~ limited common elements formed out of the convertible space,
1100 showing or designating the unit ~~or units~~ to which each is assigned.

1101 ~~(e)~~ C. If all or any portion of any convertible space is converted into one or more units in
1102 accordance with this section, the declarant shall prepare and execute, and record simultaneously
1103 with the amendment to the declaration, an amendment to the bylaws. The amendment to the
1104 bylaws shall reallocate votes in the unit owners' association, rights to future common profits,
1105 and liabilities for future common expenses not specially assessed, all as in the case of the
1106 subdivision of a unit in accordance with subsection D of § ~~55-79.70~~ 55.1-xxx.

1107 ~~(d)~~ D. Any convertible space not converted in accordance with the provisions of this
1108 section, or any portion ~~or portions thereof of such convertible space~~ not so converted, shall be
1109 treated for all purposes as a single unit until and unless it is so converted, and the provisions of
1110 this chapter shall be deemed applicable to any such convertible space, or portion ~~or portions~~
1111 thereof of such convertible space, as though the same were a unit.

1112 **Drafting note: In proposed subsection A, the term "and/or," a grammatical**
1113 **shortcut that is inherently ambiguous, is replaced with the word "or" to reflect its**
1114 **meaning in the sense of either or both/all. In proposed subsection A, the phrase "without**
1115 **limitation" is stricken following the term "including" on the basis of § 1-218, which states**
1116 **that throughout the Code "'Includes' means includes, but not limited to." In proposed**
1117 **subsection B, the phrase "or units" is stricken following the term "unit" on the basis of §**
1118 **1-227, which states that throughout the Code any word used in the singular includes the**
1119 **plural. Technical changes are made.**

1120 § ~~55-79.63~~ 55.1-xxx. Expansion of condominium.

1121 No condominium shall be expanded except in accordance with the provisions of the
1122 declaration and of this chapter. Any such expansion shall be deemed to have occurred at the

1123 time of the recordation of plats and plans pursuant to subsection C of § ~~55-79.58~~ 55.1-xxx,
1124 together with an amendment to the declaration, duly executed by the declarant, including,
1125 ~~without limitation~~, all of the owners and lessees of the additional land added to the
1126 condominium. Such amendment shall contain a legal description by metes and bounds of the
1127 land added to the condominium, and shall reallocate undivided interests in the common
1128 elements in accordance with the provisions of subsection ~~(b)~~ B of § ~~55-79.56~~ 55.1-xxx. Such
1129 amendment may create convertible or withdrawable lands or both within the land added to the
1130 condominium, but this provision shall not be construed in derogation of the time limits imposed
1131 by or pursuant to subdivision ~~(d)~~ (3) D 3 of § ~~55-79.54~~ 55.1-xxx and subsection C of § ~~55-79.61~~
1132 55.1-xxx.

1133 **Drafting note: The phrase "without limitation" is stricken following the term**
1134 **"including" on the basis of § 1-218, which states that throughout the Code "'Includes'**
1135 **means includes, but not limited to." Technical changes are made.**

1136 § ~~55-79.64~~ 55.1-xxx. Contraction of condominium.

1137 No condominium shall be contracted except in accordance with the provisions of the
1138 declaration and of this chapter. Any such contraction shall be deemed to have occurred at the
1139 time of the recordation of an amendment to the declaration, executed by the declarant,
1140 containing a legal description by metes and bounds of the land withdrawn from the
1141 condominium. If portions of the withdrawable land were described pursuant to subdivision ~~(d)~~
1142 (5) D 5 of § ~~55-79.54~~ 55.1-xxx, then no such portion shall be so withdrawn after the conveyance
1143 of any unit on such portion. If no such portions were described, then none of the withdrawable
1144 land shall be withdrawn after the first conveyance of any unit ~~thereon~~.

1145 **Drafting note: Technical changes.**

1146 § ~~55-79.65~~ 55.1-xxx. Easement to facilitate conversion and expansion.

1147 Subject to any restrictions and limitations the condominium instruments may specify, the
1148 declarant shall have a transferable easement over and on the common elements for the purpose
1149 of making improvements on the submitted land and any additional land pursuant to the

1150 provisions of those instruments and of this chapter; and for the purpose of doing all things
1151 reasonably necessary and proper in connection ~~therewith~~ with making such improvements.

1152 **Drafting note: Technical changes.**

1153 § ~~55-79.66~~ 55.1-xxx. Easement to facilitate sales.

1154 The declarant and his duly authorized agents, representatives, and employees may
1155 maintain sales offices ~~and/or or~~ model units on the submitted land if and only if the
1156 condominium instruments provide for ~~the same~~ maintaining such sales offices or model units
1157 and specify the rights of the declarant with regard to the number, size, location, and relocation
1158 thereof of such sales offices or model units. Any such sales office or model unit ~~which that~~ is
1159 not designated a unit by the condominium instruments shall become a common element as soon
1160 as the declarant ceases to be a unit owner, and the declarant shall cease to have any rights with
1161 regard ~~thereto~~ to such sales office or model unit unless ~~such sales office or model unit it~~ is
1162 removed forthwith from the submitted land in accordance with a right reserved in the
1163 condominium instruments to make such removal.

1164 **Drafting note: The term "and/or," a grammatical shortcut that is inherently**
1165 **ambiguous, is replaced with the word "or" to reflect its meaning in the sense of either or**
1166 **both/all." Technical changes are made.**

1167 § ~~55-79.67~~ 55.1-xxx. Declarant's obligation to complete and restore.

1168 ~~(a) A.~~ No covenants, restrictions, limitations, or other representations or commitments in
1169 the condominium instruments with regard to anything that is or is not to be done on the
1170 additional land, the withdrawable land, or any portion of either; shall be binding as to any
1171 portion of either lawfully withdrawn from the condominium or never added ~~thereto to the~~
1172 condominium, except to the extent that the condominium instruments so provide. But in the case
1173 of any covenant, restriction, limitation, or other representation or commitment in the
1174 condominium instruments or in any other agreement requiring the declarant to add all or any
1175 portion of the additional land or to withdraw any portion of the withdrawable land, or imposing
1176 any obligations with regard to anything that is or is not to be done ~~thereon~~ on such land or with

1177 regard ~~thereto to such land~~, or imposing any obligations with regard to anything that is or is not
1178 to be done on or with regard to the condominium or any portion ~~thereof of such condominium~~,
1179 this subsection shall not be construed to nullify, limit, or otherwise affect any such obligation.

1180 ~~(a1)~~ B. The declarant shall complete all improvements labeled "~~(NOT YET~~
1181 COMPLETED)" on plats recorded pursuant to the requirements of this chapter unless the
1182 condominium instruments expressly exempt the declarant from such obligation, and shall, in the
1183 case of every improvement labeled "~~(NOT YET BEGUN)~~" on such plats, state in the declaration
1184 either the extent of the obligation to complete the same or that there is no such obligation.

1185 ~~(b)~~ C. To the extent that damage is inflicted on any part of the condominium by any
1186 person ~~or persons~~ utilizing the easements reserved by the condominium instruments or created
1187 by §§ ~~55-79.65 55.1-xxx~~ and ~~55-79.66 55.1-xxx~~, the declarant together with ~~the any person or~~
1188 ~~persons~~ causing the same shall be jointly and severally liable for the prompt repair ~~thereof of~~
1189 ~~such damage~~ and for the restoration of the same to a condition compatible with the remainder of
1190 the condominium.

1191 **Drafting note: In proposed subsection C, the phrase "or persons" is stricken**
1192 **following the term "person" on the basis of § 1-227, which states that throughout the Code**
1193 **any word used in the singular includes the plural. Technical changes are made.**

1194 § ~~55-79.68 55.1-xxx~~. Alterations within units.

1195 ~~(a)~~ A. Except to the extent prohibited, restricted, or limited by the condominium
1196 instruments, ~~and subject to any restrictions and limitations specified therein~~, any unit owner may
1197 make any improvements or alterations within his unit that do not impair the structural integrity
1198 of any structure or otherwise lessen the support of any portion of the condominium. ~~But~~
1199 However no unit owner shall do anything ~~which that~~ would change the exterior appearance of
1200 his unit or of any other portion of the condominium except to such extent and subject to such
1201 conditions as the condominium instruments may specify.

1202 ~~(b)~~ B. If a unit owner acquires an adjoining unit, or an adjoining part of an adjoining
1203 unit, then such unit owner shall have the right to remove all or any part of any intervening

1204 partition or to create doorways or other apertures ~~therein in such unit~~, notwithstanding the fact
1205 that such partition may in whole or in part be a common element, so long as no portion of any
1206 bearing wall or bearing column is weakened or removed and no portion of any common element
1207 other than that partition is damaged, destroyed, or endangered. Such creation of doorways or
1208 other apertures shall not be deemed an alteration of boundaries within the meaning of § ~~55-~~
1209 ~~79.69~~ 55.1-xxx.

1210 **Drafting note: In proposed subsection A, language is re-worded for clarity.**
1211 **Technical changes are made.**

1212 § ~~55-79.69~~ 55.1-xxx. Relocation of boundaries between units.

1213 A. If the condominium instruments expressly permit the relocation of boundaries
1214 between adjoining units, then the boundaries between such units may be relocated in accordance
1215 with (i) the provisions of this section and (ii) any restrictions and limitations not otherwise
1216 unlawful ~~which that~~ the condominium instruments may specify. The boundaries between
1217 adjoining units shall not be relocated unless the condominium instruments expressly permit it.

1218 B. If the unit owners of adjoining units whose mutual boundaries may be relocated
1219 desire to relocate such boundaries, then the principal officer of the unit owners' association, or
1220 such other officer ~~or officers~~ as the condominium instruments may specify, shall, upon written
1221 application of such unit owners, forthwith prepare and execute appropriate instruments pursuant
1222 to subsections C, D, and E.

1223 C. An amendment to the declaration shall identify the units involved and shall state that
1224 the boundaries between those units are being relocated by agreement of the unit owners ~~thereof~~
1225 of such units, ~~which and the~~ amendment shall contain conveyancing between those unit owners.
1226 If the unit owners of the units involved have specified in their written application a reasonable
1227 reallocation as between the units involved of the aggregate undivided interest in the common
1228 elements appertaining to those units, the amendment to the declaration shall reflect that
1229 reallocation.

1230 D. If the unit owners of the units involved have specified in their written application a
1231 reasonable reallocation as between the units involved of the aggregate number of votes in the
1232 unit owners' association allocated to those units, an amendment to the bylaws shall reflect that
1233 reallocation and a proportionate reallocation of liability for common expenses as between those
1234 units.

1235 E. Such plats and plans as may be necessary to show the altered boundaries between the
1236 units involved together with their other boundaries shall be prepared, and the units depicted
1237 ~~thereon~~ on such plats and plans shall bear their identifying numbers. Such plats and plans shall
1238 indicate the new dimensions of the units involved, and any change in the horizontal boundaries
1239 of either as a result of the relocation of their boundaries shall be identified with reference to
1240 established datum. Such plats and plans shall be certified as to their accuracy and compliance
1241 with the provisions of this subsection (i) by a licensed land surveyor in the case of any plat and
1242 (ii) by a licensed architect, licensed engineer, or licensed land surveyor in the case of any plan.

1243 F. When appropriate instruments in accordance with ~~the preceding subsections hereof~~
1244 this section have been prepared, executed, and acknowledged, they shall be recorded by an
1245 officer of the unit owners' association following payment by the unit owners of the units
1246 involved of all reasonable costs for the preparation, acknowledgment, and recordation ~~thereof of~~
1247 such instruments. ~~Said Such~~ instruments ~~shall become~~ are effective when executed by the unit
1248 owners of the units involved and recorded, and the recordation ~~thereof shall be of such~~
1249 instruments is conclusive evidence that the relocation of boundaries ~~thus so~~ effectuated did not
1250 violate any restrictions or limitations specified by the condominium instruments and that any
1251 reallocations made pursuant to subsections C and D were reasonable.

1252 G. Any relocation of boundaries between adjoining units shall be governed by this
1253 section and not by § ~~55-79.70~~ 55.1-xxx. Section ~~55-79.70~~ 55.1-xxx shall apply only to such
1254 subdivisions of units as are intended to result in the creation of two or more new units in place
1255 of the subdivided unit.

1256 **Drafting note: In subsection B, the phrase "or officers" is stricken following the**
1257 **term "officer" on the basis of § 1-227, which states that throughout the Code any word**
1258 **used in the singular includes the plural. Technical changes are made.**

1259 § ~~55-79.70~~ 55.1-xxx. Subdivision of units.

1260 A. If the condominium instruments expressly permit the subdivision of any units, then
1261 such units may be subdivided in accordance with (i) the provisions of this section and (ii) any
1262 restrictions and limitations not otherwise unlawful ~~which that~~ the condominium instruments
1263 may specify. No unit shall be subdivided unless the condominium instruments expressly permit
1264 it.

1265 B. If the unit owner of any unit ~~which that~~ may be subdivided desires to subdivide such
1266 unit, then the principal officer of the unit owners' association, or such other officer ~~or officers~~
1267 the condominium instruments may specify, shall, upon written application of the subdivider, as
1268 such unit owner shall ~~henceforth~~ hereinafter be referred to in this section, forthwith prepare and
1269 execute appropriate instruments pursuant to subsections C, D₂ and E.

1270 C. An amendment to the declaration shall assign new identifying numbers to the new
1271 units created by the subdivision of a unit and shall allocate to those units, on a reasonable basis
1272 acceptable to the subdivider, all of the undivided interest in the common elements appertaining
1273 to the subdivided unit. The new units shall jointly share all rights, and shall be equally liable
1274 jointly and severally for all obligations, with regard to any limited common elements assigned to
1275 the subdivided unit except to the extent that the subdivider may have specified in his written
1276 application that all or any portions of any limited common element assigned to the subdivided
1277 unit exclusively should be assigned to one or more, but less than all of the new units, in which
1278 case the amendment to the declaration shall reflect the desires of the subdivider as expressed in
1279 such written application.

1280 D. An amendment to the bylaws shall allocate to the new units, on a reasonable basis
1281 acceptable to the subdivider, the votes in the unit owners' association allocated to the subdivided

1282 unit, and shall reflect a proportionate allocation to the new units of the liability for common
1283 expenses formerly appertaining to the subdivided unit.

1284 E. Such plats and plans as may be necessary to show the boundaries separating the new
1285 units together with their other boundaries shall be prepared, and the new units depicted ~~thereon~~
1286 on such plats and plans shall bear their new identifying numbers. Such plats and plans shall
1287 indicate the dimensions of the new units, and the horizontal boundaries ~~thereof of such units~~, if
1288 any, shall be identified ~~thereon~~ on such plats and plans with reference to established datum.
1289 Such plats and plans shall be certified as to their accuracy and compliance with the provisions of
1290 this subsection (i) by a licensed land surveyor in the case of any plat and (ii) by a licensed
1291 architect, licensed engineer, or licensed land surveyor in the case of any plan.

1292 F. When appropriate instruments in accordance with ~~the preceding subsections hereof~~
1293 this section have been prepared, executed, and acknowledged, they shall be recorded by an
1294 officer of the unit owners' association following payment by the subdivider of all reasonable
1295 costs for the preparation, acknowledgment, and recordation ~~thereof of such instruments~~. ~~Said~~
1296 Such instruments ~~shall become~~ are effective when executed by the subdivider and recorded, and
1297 the recordation ~~thereof shall be of such instruments is~~ conclusive evidence that the subdivision
1298 ~~thus so~~ effectuated did not violate any restrictions or limitations specified by the condominium
1299 instruments and that any reallocations made pursuant to subsections C and D were reasonable.

1300 G. Notwithstanding the definition of "unit" found in § ~~55-79.41~~ 55.1-xxx and the
1301 provisions of subsection ~~(d) D~~ of § ~~55-79.62~~ 55.1-xxx, this section shall have no application to
1302 convertible spaces, and no such space shall be deemed a unit for the purposes of this section.
1303 However, this section shall apply to any units formed by the conversion of all or any portion of
1304 any such convertible space, and any such unit shall be deemed a unit for the purposes of this
1305 section.

1306 **Drafting note: In subsection B, the phrase "or officers" is stricken following the**
1307 **term "officer" on the basis of § 1-227, which states that throughout the Code any word**
1308 **used in the singular includes the plural. Technical changes are made.**

1309 § ~~55-79.71~~ 55.1-xxx. Amendment of condominium instruments.

1310 A. If there is no unit owner other than the declarant, the declarant may unilaterally
1311 amend the condominium instruments, and ~~the an~~ amendment ~~shall become signed by the~~
1312 declarant is effective upon ~~the~~ recordation ~~thereof if the amendment has been executed by the~~
1313 declarant. ~~But this~~ This section shall not be construed to nullify, limit, or otherwise affect the
1314 validity of enforceability of any agreement renouncing or to renounce, in whole or in part, the
1315 right hereby conferred.

1316 B. If any of the units in the condominium is restricted exclusively to residential use and
1317 there is any unit owner other than the declarant, the condominium instruments shall be amended
1318 only by agreement of unit owners of units to which two-thirds of the votes in the unit owners'
1319 association appertain, or such larger majority as the condominium instruments may specify,
1320 except in cases for which this chapter provides different methods of amendment. If none of the
1321 units in the condominium is restricted exclusively to residential use, the condominium
1322 instruments may specify a majority smaller than the minimum specified in the preceding
1323 sentence.

1324 C. An action to challenge the validity of an amendment adopted by the unit owners'
1325 association pursuant to this section may not be brought more than one year after the amendment
1326 is recorded.

1327 D. Agreement of the required majority of unit owners to any amendment of the
1328 condominium instruments shall be evidenced by their execution of the amendment, or
1329 ratifications ~~thereof of such amendment~~, and the same ~~shall become is~~ effective when a copy of
1330 the amendment is recorded together with a certification, signed by the principal officer of the
1331 unit owners' association or by such other officer ~~or officers~~ as the condominium instruments
1332 may specify, that the requisite majority of the unit owners signed the amendment or ratifications
1333 thereof of such amendment.

1334 E. Except to the extent expressly permitted or expressly required by other provisions of
1335 this chapter, or agreed to by 100 percent of the unit owners, no amendment to the condominium

1336 instruments shall change (i) the boundaries of any unit, (ii) the undivided interest in the common
1337 elements, (iii) the liability for common expenses, or (iv) the number of votes in the unit owners'
1338 association that appertains to any unit.

1339 F. Notwithstanding any other provision of this section, the declarant may unilaterally
1340 execute and record a corrective amendment or supplement to the condominium instruments to
1341 correct a mathematical mistake, an inconsistency₂, or a scrivener's error₇, or clarify an ambiguity
1342 in the condominium instruments with respect to an objectively verifiable fact—(, including
1343 ~~without limitation~~ recalculating the undivided interest in the common elements, the liability for
1344 common expenses or the number of votes in the unit owners' association appertaining to a unit),
1345 within five years after the recordation of the condominium instrument containing or creating
1346 such mistake, inconsistency, error₂, or ambiguity. No such amendment or supplement may
1347 materially reduce what the obligations of the declarant would have been if the mistake,
1348 inconsistency, error₂, or ambiguity had not occurred. Regardless of the date of recordation of the
1349 condominium instruments, the principal officer of the unit owners' association may also
1350 unilaterally execute and record such a corrective amendment or supplement upon a vote of two-
1351 thirds of the members of the executive—~~organ~~ board. All corrective amendments and
1352 supplements recorded prior to July 1, 1986, are hereby validated to the extent that such
1353 corrective amendments and supplements would have been permitted by this subsection.

1354 **Drafting note: Language in subsection A is reworded for clarity. In subsection C,**
1355 **the phrase "or officers" is stricken following the term "officer" on the basis of § 1-227,**
1356 **which states that throughout the Code any word used in the singular includes the plural.**
1357 **In subsection F, the phrase "without limitation" is stricken following the term "including"**
1358 **on the basis of § 1-218, which states that throughout the Code "'Includes' means includes,**
1359 **but not limited to."** In subsection F, the term "executive organ" is changed to "executive
1360 board" for consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41].
1361 **Technical changes are made.**

1362 § ~~55-79.71~~:1 55.1-xxx. Use of technology.

1363 A. Unless the condominium instruments expressly provide otherwise, (i) any notice
1364 required to be sent or received or (ii) any signature, vote, consent, or approval required to be
1365 obtained under any condominium instrument or any provision of this chapter may be
1366 accomplished using ~~the most advanced technology available at that time if such use is a~~
1367 ~~generally accepted business practice. This section shall govern the use of technology in~~
1368 ~~implementing the provisions of any condominium instrument or any provision of this chapter~~
1369 ~~dealing with notices, signatures, votes, consents, or approvals~~ electronic means.

1370 B. ~~Electronic transmission and other equivalent methods.~~ The unit owners' association,
1371 unit owners, and other persons entitled to occupy a unit may perform any obligation or exercise
1372 any right under any condominium instrument or any provision of this chapter by use of ~~any~~
1373 ~~technological means providing sufficient security, reliability, identification, and verifiability.~~
1374 ~~"Acceptable technological means" shall include without limitation electronic transmission over~~
1375 ~~the Internet or the community or other network, whether by direct connection, intranet,~~
1376 ~~telecopier, or electronic mail~~ electronic means.

1377 C. ~~Signature requirements.~~ An electronic signature meeting the requirements of
1378 applicable law shall satisfy any requirement for a signature under any condominium instrument
1379 or any provision of this chapter.

1380 D. ~~Voting rights.~~ Voting, consent to, and approval of any matter under any condominium
1381 instrument or any provision of this chapter may be accomplished by electronic ~~transmission or~~
1382 ~~other equivalent technological~~ means provided that a record is created as evidence ~~thereof of~~
1383 such vote, consent, or approval and maintained as long as such record would be required to be
1384 maintained in nonelectronic form.

1385 E. ~~Acknowledgment not required.~~ Subject to other provisions of law, no action required
1386 or permitted by any condominium instrument or any provision of this chapter need be
1387 acknowledged before a notary public if the identity and signature of such person can otherwise
1388 be authenticated to the satisfaction of the executive ~~organ~~ board.

1389 F. ~~Nontechnology alternatives.~~ If any person does not have the capability or desire to
1390 conduct business using electronic ~~transmission or other equivalent technological~~ means, the unit
1391 owners' association shall make reasonable accommodation, at its expense, for such person to
1392 conduct business with the unit owners' association without use of such electronic ~~or other~~
1393 means.

1394 G. This section shall not apply to any notice related to an enforcement action by the unit
1395 owners' association, an assessment lien, or foreclosure proceedings in enforcement of an
1396 assessment lien.

1397 **Drafting note: Throughout the section, references to "electronic transmission or**
1398 **other equivalent technological means" have been changed to "electronic means" for**
1399 **accuracy and consistency with the Uniform Electronic Transactions Act (§ 59.1-479 et**
1400 **seq.). Also throughout the section, subsection catchlines are stricken because such**
1401 **catchlines do not conform to Code style. In subsection E, the term "executive organ" is**
1402 **changed to "executive board" for consistency with the term as it is defined in proposed §**
1403 **55.1-xxx [§ 55-79.41]. In subsection B, the phrase "without limitation" is stricken**
1404 **following the term "include" on the basis of § 1-218, which states that throughout the**
1405 **Code "'Includes' means includes, but not limited to." Technical changes are made.**

1406 ~~§ 55-79.71:2~~ 55.1-xxx. Merger or consolidation of condominiums; procedure.

1407 A. Any two or more condominiums, by agreement of the unit owners as provided in
1408 subsection B, may be merged or consolidated into a single condominium. In the event of a
1409 merger or consolidation, unless the agreement otherwise provides, the resultant condominium
1410 shall be the legal successor, for all purposes, of all of the preexisting condominiums, and the
1411 operations and activities of all unit owners' associations of the preexisting condominiums shall
1412 be merged or consolidated into a single unit owners' association that holds all powers, rights,
1413 obligations, assets, and liabilities of all preexisting unit owners' associations.

1414 B. An agreement to merge or consolidate two or more condominiums pursuant to
1415 subsection A shall be evidenced by an agreement prepared, executed, recorded, and certified by

1416 the principal officer of the unit owners' association of each of the preexisting condominiums
1417 following approval by owners of units to which are allocated the percentage of votes in each
1418 condominium required to terminate that condominium. The agreement shall be recorded in
1419 every locality in which a portion of the condominium is located and shall not be effective until
1420 recorded.

1421 C. Every merger or consolidation agreement shall provide for the reallocation of the
1422 allocated interests in the new unit owners' association among the units of the resultant
1423 condominium either (i) by stating the reallocations or the formulas upon which they are based or
1424 (ii) by stating the percentage of the overall allocated interests of the condominium that are
1425 allocated to all of the units comprising each of the preexisting condominiums, ~~and~~ provided that
1426 the portion of the percentages allocated to each unit formerly comprising a part of the
1427 preexisting condominium shall be equal to the percentages of allocated interests allocated to that
1428 unit by the declaration of the preexisting condominium.

1429 D. If the condominium instruments of a condominium to be merged or consolidated
1430 require a vote or consent of mortgagees in order to amend the condominium instruments or
1431 terminate the condominium, the same vote or consent of mortgagees shall be required before
1432 such merger or consolidation ~~shall become~~ is effective. No merger or consolidation shall affect
1433 mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any
1434 condominium unit as collateral for a mortgage, or affect a mortgagee's right to foreclose on a
1435 condominium unit as collateral without the prior written consent of the mortgagee. A vote or
1436 consent of a mortgagee required by this section may be deemed received pursuant to § ~~55-~~
1437 ~~79.73:1~~ 55.1-xxx.

1438 **Drafting note: No change.**

1439 ~~§ 55-79.72. Repealed.~~

1440 **Drafting note: Repealed by Acts 1993, c. 667.**

1441 ~~§ 55-79.72:1~~ 55.1-xxx. Termination of condominium.

1442 A. If there is no unit owner other than the declarant, the declarant may unilaterally
1443 terminate the condominium. An instrument terminating a condominium ~~shall become~~ signed by
1444 the declarant is effective upon recordation ~~thereof if the termination instrument has been signed~~
1445 by the declarant of such instrument. But this section shall not be construed to nullify, limit, or
1446 otherwise affect the validity or enforceability of any agreement renouncing or to renounce, in
1447 whole or in part, the right hereby conferred.

1448 B. Except in the case of a taking of all the units by eminent domain, if any of the units in
1449 the condominium is restricted exclusively to residential use and there is any unit owner other
1450 than the declarant, the condominium may be terminated only by the agreement of unit owners of
1451 units to which four-fifths of the votes in the unit owners' association appertain, or such larger
1452 majority as the condominium instruments may specify. If none of the units in the condominium
1453 is restricted exclusively to residential use, the condominium instruments may specify a majority
1454 smaller than the minimum specified in ~~the preceding sentence~~ this subsection.

1455 C. Agreement of the required majority of unit owners to termination of the condominium
1456 shall be evidenced by their execution of a termination agreement, or ratifications ~~thereof of such~~
1457 agreement, and ~~the same shall become~~ such agreement is effective when a copy of the
1458 termination agreement is recorded together with a certification, signed by the principal officer of
1459 the unit owners' association or by such other officer ~~or officers~~ as the condominium instruments
1460 may specify, that the requisite majority of the unit owners signed the termination agreement or
1461 ratifications ~~thereof~~. Unless the termination agreement otherwise provides, prior to recordation
1462 of the termination agreement, a unit owner's prior agreement to terminate the condominium may
1463 be revoked only with the approval of unit owners of units to which a majority of the votes in the
1464 unit owners' association appertain. The termination agreement shall specify a date after which
1465 the termination agreement ~~shall be~~ is void if the termination agreement is not recorded. For the
1466 purposes of this section, an instrument terminating a condominium and any ratification ~~thereof~~
1467 of such instrument shall be deemed a condominium instrument subject to the provisions of § ~~55-~~
1468 79.49 55.1-xxx.

1469 D. In the case of a condominium that contains only units having horizontal boundaries
1470 described in the condominium instruments, a termination agreement may provide that all of the
1471 common elements and units of the condominium shall be sold following termination. If,
1472 pursuant to the termination agreement, any property in the condominium is sold following
1473 termination, the termination agreement shall set forth the minimum terms of the sale.

1474 E. In the case of a condominium that contains any units not having horizontal boundaries
1475 described in the condominium instruments, a termination agreement may provide for sale of the
1476 common elements. The termination agreement may not require that the units be sold following
1477 termination, unless the condominium instruments as originally recorded provide otherwise or all
1478 the unit owners consent to the sale. In the case of a master condominium that contains a unit
1479 which that is a part of another condominium, a termination agreement for the master
1480 condominium shall not terminate the other condominium.

1481 F. On behalf of the unit owners, the unit owners' association may contract for the
1482 disposition of property in the condominium, but the contract shall not be binding on the unit
1483 owners until approved pursuant to subsections B and C ~~of this section~~. If the termination
1484 agreement requires that any property in the condominium be sold following termination, title to
1485 the property, upon termination, shall vest in the unit owners' association as trustee for the
1486 holders of all interest in the units. Thereafter, the unit owners' association shall have powers
1487 necessary and appropriate to effect the sale. Until the same termination has been concluded and
1488 the proceeds have been distributed, the unit owners' association shall continue in existence with
1489 all the powers the unit owners' association had before termination. Proceeds of the sale shall be
1490 distributed to unit owners and lien holders as their interests may appear, in proportion to the
1491 respective interests of the unit owners as provided in subsection I ~~of this section~~. Unless
1492 otherwise specified in the termination agreement, for as long as the unit owners' association
1493 holds title to the property, each unit owner or his successor in interest shall have an exclusive
1494 right to occupancy of the portion of the property that formerly constituted his unit. During the
1495 period of occupancy by the unit owner or his successor in interest, each unit owner or his

1496 successor in interest shall remain liable for any assessment or other obligation imposed on the
1497 unit owner by this chapter or the condominium instruments.

1498 G. If the property that constitutes the condominium is not sold following termination,
1499 title to the common elements and, in the case of a condominium containing only units that have
1500 horizontal boundaries described in the condominium instruments, title to all the property in the
1501 condominium shall vest in the unit owners, upon termination, as tenants in common in
1502 proportion to the unit owners' respective interests as provided in subsection I ~~of this section~~.
1503 Any liens on the units shall shift accordingly. While the tenancy in common exists, each unit
1504 owner or his successor in interest shall have the exclusive right to occupancy of the portion of
1505 the property that formerly constituted the unit owner's unit.

1506 H. Following termination of the condominium, the proceeds of any sale of property,
1507 together with the assets of the unit owners' association, shall be held by the unit owners'
1508 association as trustee for unit owners or lien holders on the units as their interests may appear.
1509 Following termination, any creditor of the unit owners' association who holds a lien on the unit
1510 that was recorded before termination may enforce the lien in the same manner as any lien
1511 holder. Any other creditor of the unit owners' association shall be treated as if he had perfected a
1512 lien on the units immediately before termination.

1513 I. Unless the condominium instruments as originally recorded or as amended by 100
1514 percent of the unit owners provide otherwise, the respective interests of unit owners referred to
1515 in subsections F, G, and H shall be as follows:

1516 1. Except as provided in subdivision 2, the respective interests of the unit owners shall
1517 be the fair market values of their units, limited common elements, and common element
1518 interests immediately before the termination, as determined by one or more independent
1519 appraisers selected by the unit owners' association. The decision of the independent appraisers
1520 shall be distributed to the unit owners and become final unless disapproved within ~~thirty~~ 30 days
1521 after distribution by unit owners of units to which ~~one-quarter~~ one quarter of the votes in the
1522 unit owners' association appertain. The proportion of any unit owner's interest to the interest of

1523 all unit owners is determined by dividing the fair market value of that unit owner's unit and
1524 common element interest by the total fair market values of all the units and their common
1525 element interests.

1526 2. If any unit or limited common element is destroyed to the extent that an appraisal of
1527 the fair market value ~~thereof~~ of such unit or limited common element before destruction cannot
1528 be made, the interests of all unit owners are the unit owners' respective common element
1529 interests immediately before the termination.

1530 J. Except as provided in subsection K, foreclosure or enforcement of a lien or
1531 encumbrance against the entire condominium shall not alone terminate the condominium, and
1532 foreclosure or enforcement of a lien or encumbrance against a portion of the condominium,
1533 other than withdrawable land, shall not withdraw that portion from the condominium.
1534 Foreclosure or enforcement of a lien or encumbrance against withdrawable land shall not alone
1535 withdraw the land from the condominium, but the person who takes title to the withdrawable
1536 land shall have the right to require from the unit owners' association, upon request, an
1537 amendment that excludes the land from the condominium.

1538 K. If a lien or encumbrance against a portion of the property that comprises the
1539 condominium has priority over the condominium instruments and the lien or encumbrance has
1540 not been partially released, upon foreclosure, the parties foreclosing the lien or encumbrance
1541 may record an instrument that excludes the property subject to the lien or encumbrance from the
1542 condominium.

1543 L. The foreclosure of any mortgage, deed of trust, or other lien shall not be deemed, ex
1544 proprio vigore, to terminate the condominium.

1545 **Drafting note: Language in subsection A is reworded for clarity. In subsection C,**
1546 **the phrase "or officers" is stricken following the term "officer" on the basis of § 1-227,**
1547 **which states that throughout the Code any word used in the singular includes the plural.**
1548 **Proposed subsection L contains language logically relocated from proposed § 55.1-xxx [§**
1549 **55-79.45]. Technical changes are made.**

1550 | § ~~55-79.72:2~~ 55.1-xxx. Rights of mortgagees.

1551 | No provision of this chapter shall be construed in derogation of any requirement of the
1552 | condominium instruments that all or a specified number of the beneficiaries of mortgages or
1553 | deeds of trust encumbering the condominium units approve specified actions contemplated by
1554 | the unit owners' association.

1555 | **Drafting note: No change.**

1556 | § ~~55-79.72:3~~ 55.1-xxx. Statement of unit owner rights.

1557 | Every unit owner who is a member in good standing of a unit owners' association shall
1558 | have the following rights:

1559 | 1. The right of access to all books and records kept by or on behalf of the unit owners'
1560 | association according to and subject to the provisions of § ~~55-79.74:1~~ 55.1-xxx, including
1561 | records of all financial transactions;

1562 | 2. The right to cast a vote on any matter requiring a vote by the unit owners' association
1563 | membership in proportion to the unit owner's ownership interest, except to the extent that the
1564 | condominium instruments provide otherwise;

1565 | 3. The right to have notice of any meeting of the executive ~~organ board~~, to make a record
1566 | of such meetings by audio or visual means, and to participate in such meeting in accordance
1567 | with the provisions of § ~~55-79.75~~ 55.1-xxx;

1568 | 4. The right to have (i) notice of any proceeding conducted by the executive ~~organ board~~
1569 | or other tribunal specified in the condominium instruments against the unit owner to enforce any
1570 | rule or regulation of the unit owners' association and (ii) the opportunity to be heard and
1571 | represented by counsel at the proceeding, as provided in § ~~55-79.80:2~~ 55.1-xxx, and the right of
1572 | due process in the conduct of that hearing; and

1573 | 5. The right to serve on the executive ~~organ board~~ if duly elected and a member in good
1574 | standing of the unit owners' association, except to the extent that the condominium instruments
1575 | provide otherwise.

1576 The rights enumerated in this section shall be enforceable by any ~~such~~ unit owner
1577 pursuant to the provisions of § ~~55-79.53~~ 55.1-xxx.

1578 **Drafting note: In subdivisions 3, 4, and 5, the term "executive organ" is changed to**
1579 **"executive board" for consistency with the term as it is defined in proposed § 55.1-xxx [§**
1580 **55-79.41].**

1581 Article 3.

1582 Management of Condominium.

1583 **Drafting note: Existing Article 3, containing provisions about the management of**
1584 **condominiums, is retained as proposed Article 3.**

1585 § ~~55-79.73~~ 55.1-xxx. Bylaws to be recorded with declaration; contents; unit owners'
1586 association; executive ~~organ board~~; amendment of bylaws.

1587 A. ~~There~~ Bylaws providing for governance of the condominium by an association of all
1588 of the unit owners shall be recorded simultaneously with the declaration ~~a set of bylaws~~
1589 ~~providing for the self-government of the condominium by an association of all the unit owners.~~

1590 The unit owners' association may be incorporated.

1591 B. The bylaws shall provide whether or not the unit owners' association shall elect an
1592 executive ~~organ board~~. If there is to be such ~~an organ a board~~, the bylaws shall specify the
1593 powers and responsibilities of the ~~same board~~ and the number and terms of its members. Except
1594 to the extent the condominium instruments provide otherwise, any vacancy occurring in the
1595 executive ~~organ board~~ shall be filled by a vote of a majority of the remaining members of the
1596 executive ~~organ board~~ at a meeting of the executive ~~organ board~~, even though the members of
1597 the executive ~~organ board~~ present at such meeting may constitute less than a quorum because a
1598 quorum is impossible to obtain. Each person so elected shall serve until the next annual meeting
1599 of the unit owners' association at which time a successor shall be elected by a vote of the unit
1600 owners. The bylaws may delegate to such ~~organ board~~, inter alia, any of the powers and
1601 responsibilities assigned by this chapter to the unit owners' association. The bylaws shall also

1602 specify which, if any, of its powers and responsibilities the unit owners' association or its
1603 executive ~~organ~~ board may delegate to a managing agent.

1604 C. The bylaws may provide for arbitration of disputes or other means of alternative
1605 dispute resolution in accordance with subsection C of § ~~55-79.53~~ 55.1-xxx.

1606 D. In any case where an amendment to the declaration is required by subsection ~~(b), (c),~~
1607 ~~or (d)~~ B, C, or D of § ~~55-79.56~~ 55.1-xxx, the person ~~or persons~~ required to execute ~~the same~~
1608 such amendment shall also prepare and execute, and record simultaneously with such
1609 amendment, an amendment to the bylaws. The amendment to the bylaws shall allocate votes in
1610 the unit owners' association to new units on the same basis as was used for the allocation of such
1611 votes to the units depicted on plats and plans recorded pursuant to subsections A and B of § ~~55-~~
1612 ~~79.58,~~ 55.1-xxx or shall abolish the votes appertaining to former units, as ~~the case may be~~
1613 appropriate. The amendment to the bylaws shall also reallocate rights to future common profits,
1614 and liabilities for future common expenses not specially assessed, in proportion to relative
1615 voting strengths as reflected by the ~~said~~ amendment.

1616 **Drafting note: In the catchline and subsection B, the term "executive organ" is**
1617 **changed to "executive board" for consistency with the term as it is defined in proposed §**
1618 **55.1-xxx [§ 55-79.41]. In subsection D, the phrase "or persons" is stricken following the**
1619 **term "person" on the basis of § 1-227, which states that throughout the Code any word**
1620 **used in the singular includes the plural. Technical changes are made.**

1621 § ~~55-79.73:1~~ 55.1-xxx. Amendment to condominium instruments; consent of mortgagee.

1622 A. ~~In the event that~~ If any provision in the condominium instruments requires the written
1623 consent of a mortgagee in order to amend the condominium instruments, the unit owners'
1624 association shall be deemed to have received the written consent of a mortgagee if the unit
1625 owners' association sends the text of the proposed amendment by certified mail, return receipt
1626 requested, to the mortgagee at the address supplied by such mortgagee in a written request to the
1627 unit owners' association to receive notice of proposed amendments to the condominium
1628 instruments and receives no written objection to the adoption of the amendment from the

1629 mortgagee within 60 days of the date that the notice of amendment is sent by the unit owners'
1630 association, unless the condominium instruments expressly provide otherwise. If the mortgagee
1631 has not supplied an address to the unit owners' association, the unit owners' association shall be
1632 deemed to have received the written consent of a mortgagee if the unit owners' association sends
1633 the text of the proposed amendment by certified mail, return receipt requested, to the mortgagee
1634 at the address filed in the land records or with the local tax assessor's office, and receives no
1635 written objection to the adoption of the amendment from the mortgagee within 60 days of the
1636 date that the notice of amendment is sent by the unit owners' association, unless the
1637 condominium instruments expressly provide otherwise.

1638 B. Subsection A shall not apply to amendments ~~which that~~ alter the priority of the lien of
1639 the mortgagee or ~~which that~~ materially impair or affect the unit as collateral or the right of the
1640 mortgagee to foreclose on a unit as collateral.

1641 C. Where the condominium instruments are silent on the need for mortgagee consent, no
1642 mortgagee consent shall be required if the amendment to the condominium instruments does not
1643 specifically affect mortgagee rights.

1644 **Drafting note: Technical changes.**

1645 § ~~55-79.73:2~~ 55.1-xxx. Reformation of declaration; judicial procedure.

1646 A. A unit owners' association may petition the circuit court in the county or city ~~wherein~~
1647 in which the condominium or the greater part ~~thereof of the condominium~~ is located to reform
1648 the condominium instruments where the unit owners' association, acting through its executive
1649 ~~organ board~~, has attempted to amend the condominium instruments regarding ownership of
1650 legal title of the common elements or real property using provisions outlined ~~therein in the~~
1651 condominium instruments to resolve (i) ambiguities or inconsistencies in the condominium
1652 instruments that are the source of legal and other disputes pertaining to the legal rights and
1653 responsibilities of the unit owners' association or individual unit owners or (ii) scrivener's errors,
1654 including incorrectly identifying the unit owners' association, incorrectly identifying an entity

1655 other than the unit owners' association, or errors arising from oversight or from an inadvertent
1656 omission or mathematical mistake.

1657 B. The court shall have jurisdiction over matters set forth in subsection A regarding
1658 ownership of legal title of the common elements or real property to:

1659 1. Reform, in whole or in part, any provision of the condominium instruments; and

1660 2. Correct mistakes or any other error in the condominium instruments that may exist
1661 with respect to the declaration for any other purpose.

1662 C. A petition filed by the unit owners' association with the court setting forth any
1663 inconsistency or error made in the condominium instruments, or the necessity for any change
1664 [therein in such instruments](#), shall be deemed sufficient basis for the reformation, in whole or in
1665 part, of the condominium instruments, provided that:

1666 1. The unit owners' association has made three good faith attempts to convene a duly
1667 called meeting of the unit owners' association to present for consideration amendments to the
1668 condominium instruments for the reasons specified in subsection A, which attempts have proven
1669 unsuccessful as evidenced by an affidavit verified by oath of the principal officer of the unit
1670 owners' association;

1671 2. There is no adequate remedy at law as practical and effective to attain the ends of
1672 justice as may be accomplished in the circuit court;

1673 3. Where the declarant of the condominium still owns a unit or continues to have any
1674 special declarant rights in the condominium, the declarant joins in the petition of the unit
1675 owners' association;

1676 4. A copy of the petition is sent to all unit owners at least 30 days before the petition is
1677 filed as evidenced by an affidavit verified by oath of the principal officer of the unit owners'
1678 association; and

1679 5. A copy of the petition is sent to all mortgagees at least 30 days before the petition is
1680 filed as evidenced by an affidavit verified by oath of the principal officer of the unit owners'
1681 association.

1682 D. Any mortgagee of a condominium unit in the condominium shall have standing to
1683 participate in the reformation proceedings before the court. No reformation pursuant to this
1684 section shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially
1685 impair or affect any condominium unit as collateral for a mortgage, or affect a mortgagee's right
1686 to foreclose on a condominium unit as collateral without the prior written consent of the
1687 mortgagee. Consent of a mortgagee required by this section may be deemed received pursuant
1688 to § ~~55-79.73:1~~ 55.1-xxx.

1689 **Drafting note: In subsection A, the term "executive organ" is changed to "executive**
1690 **board" for consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41].**

1691 **Technical changes are made.**

1692 § ~~55-79.74~~ 55.1-xxx. Control of condominium by declarant.

1693 A. The condominium instruments may authorize the declarant, or a managing agent or
1694 some other person ~~or persons~~ selected or to be selected by the declarant, to appoint and remove
1695 some or all of the officers of the unit owners' association ~~and/or or~~ its executive ~~organ board~~, or
1696 to exercise powers and responsibilities otherwise assigned by the condominium instruments and
1697 by this chapter to the unit owners' association, the officers, or the executive ~~organ board~~. The
1698 declarant ~~or the~~ managing agent, ~~or such~~ other person ~~or persons~~ selected by the declarant to so
1699 appoint and remove officers ~~and/or or~~ the executive ~~organ board~~ or to exercise such powers and
1700 responsibilities otherwise assigned to the unit owners' association, the officers, or the executive
1701 ~~organ board~~ shall be subject to liability as fiduciaries of the unit owners for their action or
1702 omissions during the period of declarant control as specified in the condominium instruments
1703 or, if not so specified, within such period as defined in this section. But no amendment to the
1704 condominium instruments shall increase the scope of such authorization if there is any unit
1705 owner other than the declarant, and no such authorization shall be valid after the time limit set
1706 by the condominium instruments or after units to which three-fourths of the undivided interests
1707 in the common elements appertain have been conveyed, whichever occurs first. For the purposes
1708 of the preceding sentence only, the calculation of the fraction of undivided interest shall be

1709 based upon the total undivided interests assigned or to be assigned to all units registered with
1710 the Common Interest Community Board pursuant to subsection B of § 55-79.92 ~~hereof~~ and
1711 described pursuant to subdivision ~~(4) of subsection (a)~~ A 4, subdivision ~~(2) of subsection (b)~~ B
1712 2, or ~~subdivision (8) of subsection (c)~~, C 8 of § ~~55-79.54~~ 55.1-xxx.

1713 B. The time limit initially set by the condominium instruments shall not exceed five
1714 years in the case of an expandable condominium; 2 three years in the case of a condominium
1715 ~~(other than an expandable condominium)~~, 2 containing any convertible land; 2 or two years in the
1716 case of any other condominium. Such time period shall ~~commence~~ begin upon settlement of the
1717 first unit to be sold in any portion of the condominium.

1718 Notwithstanding the foregoing, at the request of the declarant, such time limits may be
1719 extended for a period not to exceed 15 years from the settlement of the first unit to be sold in
1720 any portion of the condominium or after units to which three-fourths of the undivided interests
1721 in the common elements appertain have been conveyed, whichever occurs first, provided that (i)
1722 a special meeting is held prior to the expiration of the initial period of declarant control; (ii) at
1723 such special meeting, the extension of such time limits is approved by a two-thirds affirmative
1724 vote of the unit owners other than the declarant; and (iii) at such special meeting, there is an
1725 election of a warranty review committee consisting of no fewer than three persons unaffiliated
1726 with the declarant.

1727 Prior to any such vote, the declarant shall furnish to the unit owners in the notice of such
1728 special meeting made in accordance with § ~~55-79.75~~ 55.1-xxx a written statement in a form
1729 provided by the Common Interest Community Board that discloses that an affirmative vote
1730 extends the right of the declarant, or a managing agent or some other person selected by the
1731 declarant, to (a) appoint and remove some or all of the officers of the unit owners' association or
1732 its executive ~~organ~~ board and (b) exercise powers and responsibilities otherwise assigned by the
1733 condominium instruments and by this chapter. In addition, such statement shall contain both a
1734 notice of the effect of the extension of declarant control on the enforcement of the warranty
1735 against structural defects provided by the declarant in accordance with § ~~55-79.79~~ 55.1-xxx and

1736 a statement that a unit owner is advised to exercise whatever due diligence the unit owner deems
1737 necessary to protect his interest.

1738 C. If entered into any time prior to the expiration of the period of declarant control, no
1739 contract or lease entered into with the declarant or any entity controlled by the declarant,
1740 management contract, employment contract, or lease of recreational or parking areas or
1741 facilities, which is directly or indirectly made by or on behalf of the unit owners' association, its
1742 executive ~~organ~~ board, or the unit owners as a group, shall be entered into for a period in excess
1743 of two years. Any such contract or agreement entered into on or after July 1, 1978, may be
1744 terminated without penalty by the unit owners' association or its executive ~~organ~~ board upon not
1745 less than 90 days' written notice to the other party given not later than 60 days after the
1746 expiration of the period of declarant control. Any such contract or agreement may be renewed
1747 for periods not in excess of two years; however, at the end of any two-year period the unit
1748 owners' association or its executive ~~organ~~ board may terminate any further renewals or
1749 extensions ~~thereof of such contract or agreement~~. The provisions of this subsection shall not
1750 apply to any lease ~~or leases which are~~ referred to in § ~~55-79.48~~ 55.1-xxx or ~~which are~~ subject to
1751 subsection ~~(e)~~ E of § ~~55-79.54~~ 55.1-xxx.

1752 D. If entered into at any time prior to the expiration of the period of declarant control,
1753 any contract, lease, or agreement, other than those subject to the provisions of subsection C,
1754 may be entered into by or on behalf of the unit owners' association, its executive ~~organ~~ board, or
1755 the unit owners as a group, if such contract, lease, or agreement is bona fide and is
1756 commercially reasonable to the unit owners' association at the time entered into under the
1757 circumstances.

1758 E. This section does not apply to any contract, incidental to the disposition of a
1759 condominium unit, to provide to a unit owner for the duration of such unit owner's life, or for
1760 any term in excess of one year, nursing services, medical services, other health-related services,
1761 board and lodging and care as necessary, or any combination of such services. The rule of
1762 property law known as the rule restricting unreasonable restraints on alienation shall not be

1763 applied to defeat any provision of the condominium instruments requiring that the unit owners
1764 be parties to such contracts.

1765 F. If the unit owners' association is not in existence or does not have officers at the time
1766 of the creation of the condominium, the declarant shall, until there is such an association with
1767 such officers, have the power and the responsibility to act in all instances where this chapter
1768 requires action by the unit owners' association, its executive ~~organ~~ board, or any officer ~~or~~
1769 officers.

1770 G. Thirty days prior to the expiration of the period of declarant control, the declarant
1771 shall notify the governing body of the ~~city, county or town~~ locality in which the condominium is
1772 located of the forthcoming termination of declarant control. Prior to the expiration of the 30-day
1773 period, the local governing body or an agency designated by the local governing body shall
1774 advise the principal elected officer of the condominium unit owners' association of any
1775 outstanding violations of applicable building codes, or local ordinances or other deficiencies of
1776 record.

1777 H. Within 45 days from the expiration of the period of declarant control, the declarant
1778 shall deliver to the president of the unit owners' association or his designated agent (i) all unit
1779 owners' association books and records held by or controlled by the declarant, including, ~~without~~
1780 limitation, the following items: minute books and all rules, regulations, and amendments ~~which~~
1781 thereto to such rules and regulations that may have been promulgated; (ii) ~~a~~ an accurate and
1782 complete statement of receipts and expenditures prepared using the accrual method of
1783 accounting from the date of the recording of the condominium instruments to the end of the
1784 regular accounting period immediately succeeding the first ~~election of the board of directors by~~
1785 annual meeting of the unit owners, not to exceed 60 days from the date of the election, ~~such~~
1786 ~~statement being prepared in an accurate and complete manner, utilizing the accrual method of~~
1787 accounting; (iii) a copy of the latest available approved plans and specifications for all
1788 improvements in the project or as-built plans, if available; (iv) all association insurance policies
1789 ~~which~~ that are currently in force; (v) written unexpired warranties of the contractors,

1790 subcontractors, suppliers, and manufacturers, if any; (vi)-~~any~~ contracts in which the association
1791 is a contracting party, if any; and (vii) a list of manufacturers of paints, roofing materials, and
1792 other similar materials if specified for use on the condominium property.

1793 ~~In the event that~~ If the unit owners' association is managed by a management company in
1794 which the declarant, or its principals, have no pecuniary interest or management role, then such
1795 management company shall have the responsibility to provide the documents and information-~~as~~
1796 required by clauses (i), (ii), (iv), and (vi)-~~of this subsection~~.

1797 I. This section shall be strictly construed to protect the rights of the unit owners.

1798 **Drafting note: In subsection A, the phrase "or persons" is stricken following the**
1799 **term "person," in subsection E, the phrase "or leases" is stricken following the term**
1800 **"lease," and in subsection F, the phrase "or officers" is stricken following the term**
1801 **"officer" on the basis of § 1-227, which states that throughout the Code any word used in**
1802 **the singular includes the plural. Throughout the section, the term "executive organ" is**
1803 **changed to "executive board" for consistency with the term as it is defined in proposed §**
1804 **55.1-xxx [§ 55-79.41]. In subsection A, the term "and/or," a grammatical shortcut that is**
1805 **inherently ambiguous, is replaced with the word "or" to reflect its meaning in the sense of**
1806 **either or both/all. In subsection G, the phrase "city, county, or town" is replaced with the**
1807 **term "locality" on the basis of § 1-221, which states that throughout the Code "'Locality'**
1808 **means a county, city, or town as the context may require." In subsection H, the phrase**
1809 **"without limitation" is stricken after the term "including" on the basis of § 1-218, which**
1810 **states that throughout the Code "'Includes' means includes, but not limited to." In**
1811 **subsection H, the phrase "election of the board of directors" is replaced with "annual**
1812 **meeting" because there may not be a board of directors. Technical changes are made.**

1813 ~~§ 55-79.74:01~~ 55.1-xxx. Deposit of funds.

1814 All funds deposited with a managing agent shall be handled in a fiduciary capacity and
1815 shall be kept in a fiduciary trust account in a federally insured financial institution separate from
1816 other assets of the managing agent. The funds shall be the property of the unit owners'

1817 association and shall be segregated for each account in the records of the managing agent in a
1818 manner that permits the funds to be identified on an individual unit owners' association basis.

1819 **Drafting note: No change.**

1820 § ~~55-79.74:1~~ 55.1-xxx. Books, minutes, and records; inspection.

1821 A. The declarant, ~~the~~ managing agent, ~~the~~ unit owners' association, or ~~the~~ person
1822 specified in the bylaws of the association shall keep detailed records of the receipts and
1823 expenditures affecting the operation and administration of the condominium and specifying the
1824 maintenance and repair expenses of the common elements and any other expenses incurred by
1825 or on behalf of the association. Subject to the provisions of subsections B, C, and D, upon
1826 request, any unit owner shall be provided a copy of such records and minutes. All financial
1827 books and records shall be kept in accordance with generally accepted accounting practices.

1828 B. Subject to the provisions of subsection C, all books and records kept by or on behalf
1829 of the unit owners' association, including, ~~but not limited to,~~ the unit owners' association
1830 membership list, and addresses and aggregate salary information of unit owners' association
1831 employees, shall be available for examination and copying by a unit owner in good standing or
1832 his authorized agent so long as the request is for a proper purpose related to his membership in
1833 the unit owners' association, and not for pecuniary gain or commercial solicitation.
1834 Notwithstanding any provision of law to the contrary, this right of examination shall exist
1835 without reference to the duration of membership and may be exercised (i) only during
1836 reasonable business hours or at a mutually convenient time and location and (ii) upon five
1837 business days' written notice for a unit owner association managed by a common interest
1838 community manager and 10 business days' written notice for a self-managed unit owners'
1839 association, which notice shall reasonably identify the purpose for the request and the specific
1840 books and records of the unit owners' association requested.

1841 C. Books and records kept by or on behalf of a unit owners' association may be withheld
1842 from examination or copying by unit owners and contract purchasers to the extent that they are

1843 drafts not yet incorporated into the ~~unit owners' association's~~ books and records of the unit
1844 owners' association or if such books and records concern:

1845 1. Personnel matters relating to specific, identified persons or a person's medical records;

1846 2. Contracts, leases, and other commercial transactions to purchase or provide goods or
1847 services, currently in or under negotiation;

1848 3. Pending or probable litigation. Probable For purposes of this subdivision, "probable
1849 litigation" means those instances where there has been a specific threat of litigation from a ~~party~~
1850 person having standing to bring legal action or the legal counsel of a ~~party~~ such person;

1851 4. Matters involving state or local administrative or other formal proceedings before a
1852 government tribunal for enforcement of the condominium instruments or rules and regulations
1853 promulgated by the executive ~~organ board~~;

1854 5. Communications with legal counsel ~~which that~~ relates to subdivisions 1 through 4 or
1855 which that is protected by the attorney-client privilege or the attorney work product doctrine;

1856 6. Disclosure of information in violation of law;

1857 7. Meeting minutes or other confidential records of an executive session of the executive
1858 ~~organ board~~ held pursuant to subsection C of § ~~55-79.75~~ 55.1-xxx;

1859 8. Documentation, correspondence, or management or executive ~~organ board~~ reports
1860 compiled for or on behalf of the unit owners' association or the executive ~~organ board~~ by its
1861 agents or committees for consideration by the executive ~~organ board~~ in executive session; or

1862 9. Individual unit owner or member files, other than those of the requesting unit owner,
1863 including any individual unit owner's files kept by or on behalf of the unit owners' association.

1864 D. Prior to providing copies of any books and records, the unit owners' association may
1865 impose and collect a charge, reflecting not to exceed the reasonable costs of materials and labor,
1866 ~~not to exceed the actual costs thereof incurred to provide such copies~~. Charges may be imposed
1867 only in accordance with a cost schedule adopted by the executive ~~organ board~~ in accordance
1868 with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii)

1869 apply equally to all unit owners in good standing, and (iii) be provided to such requesting unit
1870 owner at the time the request is made.

1871 **Drafting note: In subsection B, the phrase "but not limited to" is stricken after the**
1872 **term "including" on the basis of § 1-218, which states that throughout the Code**
1873 **"'Includes' means includes, but not limited to." In subdivision C 3, the word "party" is**
1874 **replaced with "person having standing to bring legal action" because there is not yet**
1875 **pending litigation to which such person can be a party. In subsections C and D, the term**
1876 **"executive organ" is changed to "executive board" for consistency with the term as it is**
1877 **defined in proposed § 55.1-xxx [§ 55-79.41]. In subsection D, a sentence is re-organized for**
1878 **clarity. Technical changes are made.**

1879 [§ ~~55-79.74:2~~ 55.1-xxx](#). Management office.

1880 Unless the condominium instruments expressly provide otherwise, the unit owners'
1881 association shall not be prohibited from maintaining a management office on common elements
1882 or in one or more units in the condominium.

1883 **Drafting note: No change.**

1884 [§ ~~55-79.74:3~~ 55.1-xxx](#). Transfer of special declarant rights.

1885 A. [For the purposes of this section, "affiliate of a declarant" means any person who](#)
1886 [controls, is controlled by, or is under common control with a declarant. A person controls a](#)
1887 [declarant if the person \(i\) is a general partner, officer, director, or employer of the declarant; \(ii\)](#)
1888 [directly or indirectly, or acting in concert with one or more persons or through one or more](#)
1889 [subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than](#)
1890 [20 percent of the voting interests in the declarant; \(iii\) controls in any manner the election of a](#)
1891 [majority of the directors of the declarant; or \(iv\) has contributed more than 20 percent of the](#)
1892 [capital of the declarant. A person is controlled by a declarant if the declarant \(a\) is a general](#)
1893 [partner, officer, director, or employer of the person; \(b\) directly or indirectly, or acting in](#)
1894 [concert with one or more other persons or through one or more subsidiaries, owns, controls,](#)
1895 [holds with power to vote, or holds proxies representing more than 20 percent of the voting](#)

1896 interest in the person; (c) controls in any manner the election of a majority of the directors of the
1897 person; or (d) has contributed more than 20 percent of the capital of the person. Control does not
1898 exist if the powers described in this subsection are held solely as security for an obligation and
1899 are not exercised.

1900 B. No special declarant right may be transferred except by a document evidencing the
1901 transfer recorded in every county and city ~~and county wherein~~ in which any portion of the
1902 condominium is located. The instrument shall not be effective unless executed by the transferee.

1903 B.C. Upon transfer of any special declarant right, the liability of a transferor declarant
1904 shall be as follows:

1905 1. The transferor shall not be relieved of any obligation or liability arising before the
1906 transfer and shall remain liable for warranty obligations imposed upon him by subsection B of §
1907 ~~55-79.79~~ 55.1-xxx. Lack of privity shall not deprive any unit owner of standing to bring an
1908 action to enforce any obligation of the transferor.

1909 2. If the successor to any special declarant right is an affiliate of a declarant, the
1910 transferor shall also be jointly and severally liable with the successor for any obligation or
1911 liability of the successor ~~which~~ that relates to the condominium.

1912 3. If a transferor retains any special declarant rights, but transfers other special declarant
1913 rights to a successor who is not an affiliate of the declarant, the transferor shall also be liable for
1914 all obligations and liabilities relating to the retained special declarant rights and imposed on a
1915 declarant by this chapter or by the condominium instruments.

1916 4. A transferor shall have no liability for any breach of a contractual or warranty
1917 obligation or for any other act or omission, arising from the exercise of a special declarant right
1918 by a successor declarant who is not an affiliate of the transferor.

1919 C.D. Except as otherwise provided by the mortgage or deed of trust, in case of
1920 foreclosure of a mortgage, sale by a trustee under a deed of trust, tax sale, judicial sale, or sale
1921 under receivership proceedings or the Bankruptcy Code as codified in Title 11 of the United
1922 States Code, of any unit owned by a declarant or land subject to development rights:

1923 1. A person acquiring title to all the land being foreclosed or sold shall, but only upon his
1924 request, succeed to all special declarant rights related to that land reserved by that declarant, or
1925 only to any rights reserved in the declaration pursuant to § ~~55-79.66~~ 55.1-xxx and held by that
1926 declarant to maintain sales offices, management offices, model units ~~and/or, or~~ signs.

1927 2. The judgment or instrument conveying title shall provide for transfer of only the
1928 special declarant rights requested.

1929 For the purposes of this subsection, "development rights" means any right or
1930 combination of rights to expand an expandable condominium, contract a contractable
1931 condominium, convert convertible land, or convert convertible space.

1932 ~~D-E.~~ Upon foreclosure, sale by a trustee under a deed of trust, tax sale, judicial sale, or
1933 sale under receivership proceedings or the Bankruptcy Code as codified in Title 11 of the United
1934 States Code of all units and other land in the condominium owned by a declarant, (i) that
1935 declarant ceases to have any special declarant rights, and (ii) any period of declarant control
1936 reserved under subsection A of § ~~55-79.74~~ 55.1-xxx shall terminate, unless the judgment or
1937 instrument conveying title provides for transfer of all special declarant rights held by that
1938 declarant to a successor declarant.

1939 ~~E-F.~~ The liabilities and obligations of any person ~~or persons~~ who succeed to any special
1940 declarant right shall be as follows:

1941 1. A successor to any special declarant right who is an affiliate of a declarant is subject
1942 to all obligations and liabilities imposed on the transferor by this chapter or by the condominium
1943 instruments.

1944 2. A successor to any special declarant right, other than a successor described in
1945 subdivisions 3 and 4 ~~of this subsection~~, who is not an affiliate of a declarant shall be subject to
1946 all obligations and liabilities imposed by this chapter or the condominium instruments on a
1947 declarant, ~~which that~~ relate to his exercise or nonexercise of special declarant rights, or on his
1948 transferor, except for (i) misrepresentations by any prior declarant, (ii) warranty obligations as
1949 provided in subsection B of § ~~55-79.79~~ 55.1-xxx on improvements made by any previous

1950 declarant or made before the condominium was created, (iii) breach of any fiduciary obligation
1951 by any previous declarant or his appointees to the executive ~~organ~~ board, or (iv) any liability or
1952 obligation imposed on the transferor as a result of the transferor's acts or omissions after the
1953 transfer.

1954 3. Unless he is an affiliate of a declarant, a successor to only a right reserved in the
1955 declaration to maintain sales offices, management offices, model units ~~and/or, or~~ signs shall not
1956 exercise any other special declarant right and shall not be subject to any liability or obligation as
1957 a declarant, except the liabilities and obligations arising under Article 4 (§ ~~55-79.86~~ 55.1-xxx et
1958 seq.) ~~of this chapter~~ as to disposition by that successor.

1959 4. A successor to all special declarant rights held by his transferor who is not an affiliate
1960 of that transferor and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a
1961 judgment or instrument conveying title to units under subsection ~~C~~ hereof ~~D~~ may declare his
1962 intention in a recorded instrument to hold those rights solely for transfer to another person.
1963 Thereafter, until transferring all special declarant rights to any person acquiring title to any unit
1964 owned by the successor, or until recording an instrument permitting exercise of all those rights,
1965 that successor may not exercise any of those rights other than any right reserved by his
1966 transferor pursuant to subsection A of § ~~55-79.74~~ 55.1-xxx. Any attempted exercise of those
1967 rights is void. So long as a successor declarant may not exercise special declarant rights under
1968 this subsection, he shall not be subject to any liability or obligation as a declarant other than
1969 liability for his acts and omissions relating to the exercise of rights reserved under subsection A
1970 of § ~~55-79.74~~ 55.1-xxx.

1971 F. G. Nothing in this section subjects any successor to a special declarant right to any
1972 claims against or other obligations of a transferor declarant, other than claims and obligations
1973 arising under this chapter or the condominium instruments.

1974 G. ~~For the purposes of this section, "affiliate of a declarant" means any person who~~
1975 ~~controls, is controlled by, or is under common control with a declarant. A person controls a~~
1976 ~~declarant if the person (i) is general partner, officer, director or employer of the declarant, (ii)~~

1977 ~~directly or indirectly or acting in concert with one or more persons or through one or more~~
1978 ~~subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than~~
1979 ~~twenty percent of the voting interests in the declarant, (iii) controls in any manner the election of~~
1980 ~~a majority of the directors of the declarant, or (iv) has contributed more than twenty percent of~~
1981 ~~the capital of the declarant. A person is controlled by a declarant if the declarant (i) is a general~~
1982 ~~partner, officer, director or employer of the person, (ii) directly or indirectly or acting in concert~~
1983 ~~with one or more other persons or through one or more subsidiaries, owns, controls, holds with~~
1984 ~~power to vote or holds proxies representing more than twenty percent of the voting interest in~~
1985 ~~the person, (iii) controls in any manner the election of a majority of the directors of the person,~~
1986 ~~or (iv) has contributed more than twenty percent of the capital of the person. Control does not~~
1987 ~~exist if the powers described in this paragraph are held solely as security for an obligation and~~
1988 ~~are not exercised.~~

1989 **Drafting note: The defined term "affiliate of a declarant" in existing subsection G**
1990 **is relocated to proposed subsection A. In proposed subdivisions D 1 and F 3, the term**
1991 **"and/or," a grammatical shortcut that is inherently ambiguous, is replaced with the word**
1992 **"or" to reflect its meaning "or" in the sense of either or both/all. In proposed subsection**
1993 **F, the phrase "or persons" is stricken following the term "person" on the basis of § 1-227,**
1994 **which states that throughout the Code any word used in the singular includes the plural.**
1995 **In proposed subdivision F 2, the term "executive organ" is changed to "executive board"**
1996 **for consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41]. Technical**
1997 **changes.**

1998 ~~§ 55-79.74:4~~ § 55.1-xxx. Declarants not succeeding to special declarant rights.

1999 A declarant who does not succeed to any special declarant rights shall be liable only to
2000 the extent of his actions for claims and obligations arising under this chapter or the
2001 condominium instruments.

2002 **Drafting note: No change.**

2003 § ~~55-79.75~~ 55.1-xxx. Meetings of unit owners' ~~associations~~association and executive
2004 ~~organ board~~.

2005 A. 1. Meetings of the unit owners' association shall be held in accordance with the
2006 provisions of the condominium instruments at least once each year after the formation of ~~said~~
2007 the association. The bylaws shall specify an officer or his agent who shall, at least 21 days in
2008 advance of any annual or regularly scheduled meeting, and at least seven days in advance of any
2009 other meeting, send to each unit owner notice of the time, place, and purposes of such meeting.
2010 In the event of cancellation of any annual meeting of the unit owners' association at which
2011 directors are elected, the seven-day notice of any subsequent meeting scheduled to elect such
2012 directors shall include a statement that the meeting is scheduled for the purpose of the election
2013 of directors.

2014 2. Notice shall be sent by United States mail to all unit owners of record at the address of
2015 their respective units, unless the unit owner has provided to such officer or his agent an address
2016 other than the address of the unit; or notice may be hand delivered by the officer or his agent,
2017 provided that the officer or his agent certifies in writing that notice was delivered to the person
2018 of the unit owner.

2019 3. In lieu of delivering notice as specified in ~~the preceding paragraph of this subsection~~
2020 subdivision 2, such officer or his agent may, to the extent that the condominium instruments or
2021 the condominium's rules adopted thereto and regulations expressly ~~so~~ provide, send notice by
2022 electronic ~~transmission means if~~ consented to by the unit owner to whom the notice is given,
2023 provided that the officer or his agent certifies in writing that notice was sent.

2024 B. 1. Except as otherwise provided in the condominium instruments, the provisions of
2025 this subsection shall apply to executive ~~organ board~~ meetings at which business of the unit
2026 owners' association is transacted or discussed. All meetings of the unit owners' association or
2027 the executive ~~organ board~~, including any subcommittee or other committee ~~thereof of such~~
2028 association or board, shall be open to all unit owners of record. The executive ~~organ board~~ shall
2029 not use work sessions or other informal gatherings of the executive ~~organ board~~ to circumvent

2030 the open meeting requirements of this section. The unit owners' association may, to the extent
2031 that the condominium instruments or adopted rules ~~adopted thereto~~ expressly ~~so~~ provide, send
2032 notice by electronic ~~transmission~~ means if consented to by the officer to whom the notice is
2033 given. Minutes of the meetings of the executive ~~organ~~ board shall be recorded and shall be
2034 available as provided in § ~~55-79.74:1~~ 55.1-xxx.

2035 2. Notice of the time, date, and place of each meeting of the executive ~~organ~~ board or of
2036 any subcommittee or other committee ~~thereof~~ of the executive board, and of each meeting of a
2037 subcommittee or other committee of the unit owners' association, shall be published where it is
2038 reasonably calculated to be available to a majority of the unit owners.

2039 A unit owner may make a request to be notified on a continual basis of any such
2040 meetings, which request shall be made at least once a year in writing and include the unit
2041 owners' name, address, zip code, and any ~~e-mail~~ email address as appropriate. Notice of the
2042 time, date, and place shall be sent to any unit owner requesting notice (i) by first-class mail or ~~e-~~
2043 mail email in the case of meetings of the executive ~~organ~~ board or (ii) by ~~e-mail~~ email in the
2044 case of meetings of any subcommittee or other committee of the executive ~~organ~~, board or of a
2045 subcommittee or other committee of the unit owners' association.

2046 Notice, reasonable under the circumstances, of special or emergency meetings shall be
2047 given contemporaneously with the notice provided to members of the (i) executive ~~organ~~ board
2048 or any subcommittee or other committee ~~thereof~~ of such board or (ii) subcommittee or other
2049 committee of the unit owners' association conducting the meeting.

2050 3. Unless otherwise exempt as relating to an executive session pursuant to subsection C,
2051 at least one copy of all agenda packets and materials furnished to members of the executive
2052 ~~organ~~ board or subcommittee or other committee ~~thereof~~ of the executive board for a meeting
2053 shall be made available for inspection by the membership of the unit owners' association at the
2054 same time such documents are furnished to the members of the executive ~~organ~~ board.

2055 4. Any unit owner may record any portion of a meeting required to be open. The
2056 executive ~~organ~~ board or subcommittee or other committee ~~thereof~~ of the executive board

2057 conducting the meeting may adopt rules (i) governing the placement and use of equipment
2058 necessary for recording a meeting to prevent interference with the proceedings and (ii) requiring
2059 the unit owner recording the meeting to provide notice that the meeting is being recorded.

2060 If a meeting of the executive ~~organ~~ board is conducted by telephone conference or video
2061 conference or similar electronic means, at least two board members shall be physically present
2062 at the meeting place included in the notice. The audio equipment shall be sufficient for any
2063 member in attendance to hear what is said by any board member participating in the meeting
2064 who is not physically present.

2065 5. Voting by secret or written ballot in an open meeting ~~shall be is~~ a violation of this
2066 chapter except for the election of officers.

2067 C. The executive ~~organ~~ board or any subcommittee or other committee ~~thereof of the~~
2068 executive board may convene in executive session to consider personnel matters; consult with
2069 legal counsel; discuss and consider contracts, probable or pending litigation, and matters
2070 involving violations of the condominium instruments or rules and regulations promulgated
2071 pursuant ~~thereto~~ to such condominium instruments for which a unit owner, his family members,
2072 tenants, guests, or other invitees are responsible; or discuss and consider the personal liability of
2073 unit owners to the unit owners' association, upon the affirmative vote in an open meeting to
2074 assemble in executive session. The motion shall state specifically the purpose for the executive
2075 session. Reference to the motion and the stated purpose for the executive session shall be
2076 included in the minutes. The executive ~~organ~~ board shall restrict the consideration of matters
2077 during such portions of meetings to only those purposes specifically exempted and stated in the
2078 motion. No contract, motion, or other action adopted, passed, or agreed to in executive session
2079 shall become effective unless the executive ~~organ~~ board or subcommittee or other committee
2080 thereof of the executive board, following the executive session, reconvenes in open meeting and
2081 takes a vote on such contract, motion, or other action, which shall have its substance reasonably
2082 identified in the open meeting. The requirements of this section ~~shall do~~ not require the
2083 disclosure of information in violation of law.

2084 D. Subject to reasonable rules adopted by the executive-~~organ~~ [board](#), the executive-~~organ~~
2085 [board](#) shall provide a designated period of time during a meeting to allow unit owners an
2086 opportunity to comment on any matter relating to the unit owners' association. During a meeting
2087 at which the agenda is limited to specific topics or at a special meeting, the executive-~~organ~~
2088 [board](#) may limit the comments of unit owners to the topics listed on the meeting agenda.

2089 **Drafting note: Throughout the section, "electronic transmission" has been changed**
2090 **to "electronic means" for accuracy and consistency with the Uniform Electronic**
2091 **Transactions Act (§ 59.1-479 et seq.). Throughout the section, the term "executive organ"**
2092 **is changed to "executive board" for consistency with the term as it is defined in proposed §**
2093 **55.1-xxx [§ 55-79.41]. Subsections A and B are organized into subdivisions for clarity. In**
2094 **proposed subdivision B 1, the phrase "at which business of the unit owners' association is**
2095 **transacted or discussed" is added on the basis of the definition of "meeting," which is**
2096 **proposed to be deleted in proposed § 55.1-xxx [§ 55-79.41]. Technical changes are made.**

2097 § ~~55-79.75:1~~ [55.1-xxx](#). Distribution of information by members.

2098 A. The executive-~~organ~~ [board](#) shall establish a reasonable, effective, and free method,
2099 appropriate to the size and nature of the condominium, for unit owners to communicate among
2100 themselves and with the executive-~~organ~~ [board](#) regarding any matter concerning the unit owners'
2101 association.

2102 B. Except as otherwise provided in the condominium instruments, the executive-~~organ~~
2103 [board](#) shall not require prior approval of the dissemination or content of any material regarding
2104 any matter concerning the unit owners' association.

2105 **Drafting note: The term "executive organ" is changed to "executive board" for**
2106 **consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41].**

2107 § ~~55-79.75:2~~ [55.1-xxx](#). Display of the flag of the United States; necessary supporting
2108 structures; affirmative defense.

2109 A. In accordance with the federal Freedom to Display the American Flag Act of 2005
2110 ([P.L. 109-243](#)), no unit owners' association shall prohibit or otherwise adopt or enforce any

2111 policy restricting a unit owner from displaying upon property to which the unit owner has a
2112 separate ownership interest or a right to exclusive possession or use the flag of the United States
2113 whenever such display is in compliance with Chapter 1 of Title 4 of the United States Code, [\(4](#)
2114 [U.S.C. § 1 et seq.\)](#) or any rule or custom pertaining to the proper display of the flag. A unit
2115 owners' association may, however, establish reasonable restrictions as to the size, place,
2116 duration, and manner of placement or display of the flag on such property, provided [that](#) such
2117 restrictions are necessary to protect a substantial interest of the unit owners' association.

2118 B. The unit owners' association may restrict the display of such flags in the common
2119 elements.

2120 C. In any action brought by the unit owners' association under [§ ~~55-79.80:2~~ 55.1-xxx](#) for
2121 a violation of a flag restriction, the unit owners' association shall bear the burden of proof that
2122 the restrictions as to the size, place, duration, and manner of placement or display of such flag
2123 are necessary to protect a substantial interest of the unit owners' association.

2124 D. In any action brought by the unit owners' association under [§ ~~55-79.80:2~~ 55.1-xxx](#),
2125 the unit owner shall be entitled to assert as an affirmative defense that the required disclosure of
2126 any limitation pertaining to the flag of the United States or any flagpole or similar structure
2127 necessary to display the flag of the United States was not contained in the public offering
2128 statement or resale certificate, as appropriate, required pursuant to [§ ~~55-79.90~~ 55.1-xxx](#) or [§ ~~55-~~](#)
2129 [79.97 55.1-xxx \[contents of resale certificate; delivery\]](#).

2130 **Drafting note: Technical changes.**

2131 [§ ~~55-79.76~~ 55.1-xxx](#). Meetings of unit owners' associations and executive ~~organ~~ [board](#);
2132 quorums.

2133 A. Unless the condominium instruments otherwise provide or as specified in subsection
2134 G of [§ ~~55-79.77~~ 55.1-xxx](#), a quorum shall be deemed to be present throughout any meeting of
2135 the unit owners' association until adjourned if persons entitled to cast more than ~~33 1/3 percent~~
2136 [one-third](#) of the votes are present at the beginning of such meeting. The bylaws may provide for
2137 a larger percentage, or for a smaller percentage not less than 10 percent.

2138 B. Unless the condominium instruments specify a larger majority, a quorum shall be
2139 deemed to be present throughout any meeting of the executive ~~organ~~ board if persons entitled to
2140 cast one-half of the votes in that body are present at the beginning of such meeting.

2141 C. On petition of the unit owners' association or any unit owner entitled to vote, the
2142 circuit court of the county or city ~~or county~~ in which the condominium or the greater part
2143 thereof of such condominium is located may order an annual meeting of the unit owners'
2144 association be held for the purpose of the election of members of the executive ~~organ~~ board,
2145 provided that:

2146 1. No annual meeting as required by § ~~55-79.75~~ 55.1-xxx has been held due to the failure
2147 to obtain a quorum of unit owners as specified in the condominium instruments; and

2148 2. The unit owners' association has made good faith attempts to convene a duly called
2149 annual meeting of the unit owners' association in three successive years, which attempts have
2150 proven unsuccessful due to the failure to obtain a quorum.

2151 The court may set the quorum for the meeting and enter other orders necessary to
2152 convene the meeting.

2153 A unit owner filing a petition under this subsection shall provide a copy of the petition to
2154 the executive ~~organ~~ board at least ~~ten~~ 10 business days prior to filing.

2155 **Drafting note: The term "executive organ" is changed to "executive board" for**
2156 **consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41]. A technical**
2157 **change is made.**

2158 § ~~55-79.77~~ 55.1-xxx. Meetings of unit owners' associations and executive ~~organ~~ board;
2159 voting by unit owners; proxies.

2160 A. The bylaws may allocate to each unit depicted on plats and plans that comply with
2161 subsections A and B of § ~~55-79.58~~ 55.1-xxx a number of votes in the unit owners' association
2162 proportionate to the undivided interest in the common elements appertaining to each such unit.

2163 B. Otherwise, the bylaws shall allocate to each such unit an equal number of votes in the
2164 unit owners' association, subject to the following exception: Each convertible space so depicted

2165 shall be allocated a number of votes in the unit owners' association proportionate to the size of
2166 each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining votes
2167 in the unit owners' association shall be allocated equally to the other units so depicted.

2168 C. Since a unit owner may be more than one person, if only one of such persons is
2169 present at a meeting of the unit owners' association, that person shall be entitled to cast the votes
2170 appertaining to that unit. ~~But if~~ If more than one of such persons is present, the vote
2171 appertaining to that unit shall be cast only in accordance with their unanimous agreement unless
2172 the condominium instruments expressly provide otherwise, and such consent shall be
2173 conclusively presumed if any one of them purports to cast the votes appertaining to that unit
2174 without protest being made forthwith by any of the others to the person presiding over the
2175 meeting. ~~Since a person need not be a natural person, the word~~ For purposes of this subsection,
2176 "person" ~~shall be is~~ deemed ~~for the purposes of this subsection~~ to include, ~~without limitation,~~
2177 any natural person having authority to execute deeds on behalf of any person, excluding natural
2178 persons, ~~which that~~ is, either alone or in conjunction with another person ~~or persons~~, a unit
2179 owner.

2180 D. The votes appertaining to any unit may be cast pursuant to a proxy ~~or proxies~~ duly
2181 executed by or on behalf of the unit owner, or, in cases where the unit owner is more than one
2182 person, by or on behalf of all such persons. No such proxy shall be revocable except by actual
2183 notice to the person presiding over the meeting, by the unit owner or by any of such persons,
2184 that it be revoked. Except to the extent otherwise provided in the condominium instruments, any
2185 proxy ~~shall be is~~ void if it is not dated, or if it purports to be revocable without the required
2186 notice ~~as aforesaid. The A~~ proxy ~~of any person shall be is~~ void if not signed by a person having
2187 authority, at the time of ~~the execution thereof~~, to execute deeds on behalf of that person. Any
2188 proxy shall terminate after the first meeting held on or after the date of that proxy or any recess
2189 or adjournment of that meeting. The proxy shall include a brief explanation of the effect of
2190 leaving the proxy uninstructed. To the extent the condominium instruments or the
2191 condominium's rules ~~adopted thereto and regulations~~ expressly so provide, a vote or proxy may

2192 be submitted by electronic ~~transmission means~~, provided that any such electronic ~~transmission~~
2193 ~~means~~ shall either set forth or be submitted with information from which it can be determined
2194 that the electronic ~~transmission means~~ was authorized by the unit owner or the unit owner's
2195 proxy.

2196 E. If 50 percent or more of the votes in the unit owners' association appertain to 25
2197 percent or less of the units, then in any case where a majority vote is required by the
2198 condominium instruments or by this chapter, the requirement for such a majority shall be
2199 deemed to include, in addition to the specified majority of the votes, assent by the unit owners
2200 of a like majority of the units.

2201 F. All votes appertaining to units owned by the unit owners' association shall be deemed
2202 present for quorum purposes at all duly called meetings of the unit owners' association and shall
2203 be deemed cast in the same proportions as the votes cast by unit owners other than the unit
2204 owners' association.

2205 G. Except to the extent that the condominium instruments provide otherwise, the voting
2206 interest allocated to the unit or member that has been suspended by the unit owners' association
2207 or the executive ~~organ board~~ pursuant to the condominium instruments shall not be counted in
2208 the total number of voting interests used to determine the quorum for any meeting or vote under
2209 the condominium instruments.

2210 **Drafting note: In the catchline and in subsection G, the term "executive organ" is**
2211 **changed to "executive board" for consistency with the term as it is defined in proposed §**
2212 **55.1-xxx [§ 55-79.41]. In subsection C, the phrase "without limitation" is stricken after the**
2213 **term "include" on the basis of § 1-218, which states that throughout the Code "'Includes'**
2214 **means includes, but not limited to." In subsection C, the phrase "or persons" is stricken**
2215 **after the word "person" and in subsection D, the phrase "or proxies" is stricken after the**
2216 **word "proxy" on the basis of § 1-227, which states that throughout the Code any word**
2217 **used in the singular includes the plural. In subsection D, "electronic transmission" is**

2218 changed to "electronic means" for accuracy and consistency with the Uniform Electronic
2219 Transactions Act (§ 59.1-479 et seq.). Technical changes are made.

2220 § ~~55-79.78~~ 55.1-xxx. Officers.

2221 A. If the condominium instruments provide that any officer ~~or officers~~ must be a unit
2222 ~~owners~~ owner, then any such officer who disposes of all of his units in fee shall be deemed to
2223 have disqualified himself from continuing in office unless the condominium instruments
2224 otherwise provide, or unless he acquires or contracts to acquire another unit in the condominium
2225 under terms giving him a right of occupancy ~~thereto~~ effective on or before the termination of his
2226 right of occupancy under such disposition ~~or dispositions~~.

2227 B. If the condominium instruments provide that any officer ~~or officers~~ must be a unit
2228 ~~owners~~ owner, then notwithstanding the provisions of ~~subsection (a) subdivision 1~~ of § ~~55-79.50~~
2229 55.1-xxx, the term "unit owner" in such context shall, unless the condominium instruments
2230 otherwise provide, be deemed to include ~~without limitation~~, any director, officer, partner in, or
2231 trustee of any person ~~which that~~ is, either alone or in conjunction with another person ~~or~~
2232 ~~persons~~, a unit owner. Any officer who would not be eligible to serve as such were he not a
2233 director, officer, partner in, or trustee of such a person, shall be deemed to have disqualified
2234 himself from continuing in office if he ceases to have any such affiliation with that person, or if
2235 that person would itself have been deemed to have disqualified itself from continuing in such
2236 office under subsection A were it a natural person holding such office.

2237 **Drafting note: In subsections A and B, the phrase "or officers" is stricken after the**
2238 **word "officer"; in subsection A, the phrase "or dispositions" is stricken after the word**
2239 **"disposition"; and in subsection B, the phrase "or persons" is stricken after the word**
2240 **"person" on the basis of § 1-227, which states that throughout the Code any word used in**
2241 **the singular includes the plural. In subsection B, the phrase "without limitation" is**
2242 **stricken after the term "include" on the basis of § 1-218, which states that throughout the**
2243 **Code "'Includes' means includes, but not limited to." Technical changes are made.**

2244 § ~~55-79.79~~ 55.1-xxx. Upkeep of condominiums; warranty against structural defects;
2245 statute of limitations for warranty; warranty review committee.

2246 A. Except to the extent otherwise provided by the condominium instruments, all powers
2247 and responsibilities, including financial responsibility, with regard to maintenance, repair,
2248 renovation, restoration, and replacement of the condominium shall belong (i) to the unit owners'
2249 association in the case of the common elements, and (ii) to the individual unit owner in the case
2250 of any unit or any part ~~thereof of such unit~~, except to the extent that the need for repairs,
2251 renovation, restoration, or replacement arises from a condition originating in or through the
2252 common elements or any apparatus located within the common elements, in which case the unit
2253 owners' association shall have such powers and responsibilities. Each unit owner shall afford to
2254 the other unit owners and to the unit owners' association and to any agents or employees of
2255 either such access through his unit as may be reasonably necessary to enable them to exercise
2256 and discharge their respective powers and responsibilities. ~~But to~~ To the extent that damage is
2257 inflicted on the common elements or any unit through which access is taken, the unit owner
2258 causing the same, or the unit owners' association if it caused the ~~same damage~~, shall be liable for
2259 the prompt repair ~~thereof of such damage~~.

2260 B. Notwithstanding anything in this section to the contrary, the declarant shall warrant or
2261 guarantee, against structural defects, each of the units for two years from the date each is
2262 conveyed, and all of the common elements for two years. ~~In the case of~~ For each unit, the
2263 declarant shall also warrant that the unit is fit for habitation in the case of a residential unit and
2264 constructed in a workmanlike manner so as to pass without objection in the trade. The ~~two years~~
2265 ~~referred to in this subsection shall begin two-year warranty~~ as to each of the common elements
2266 begins whenever ~~the same has that common element has~~ been completed or, if later, (i) as to any
2267 common element within any additional land or portion ~~thereof of the additional land~~, at the time
2268 the first unit ~~therein in that additional land~~ is conveyed; (ii) as to any common element within
2269 any convertible land or portion ~~thereof of the convertible land~~, at the time the first unit ~~therein in~~
2270 the convertible land is conveyed; and (iii) as to any common element within any other portion

2271 of the condominium, at the time the first unit ~~therein~~ in that portion is conveyed. For the
2272 purposes of this subsection, no unit shall be deemed conveyed unless conveyed to a bona fide
2273 purchaser. Any conveyance of a condominium unit transfers to the purchaser all of the
2274 declarant's warranties against structural defects imposed by this subsection. For the purposes of
2275 this subsection, structural defects shall be those defects in components constituting any unit or
2276 common element ~~which that~~ reduce the stability or safety of the structure below accepted
2277 standards or restrict the normal intended use of all or part of the structure and ~~which that~~ require
2278 repair, renovation, restoration, or replacement. Nothing in this subsection shall be construed to
2279 make the declarant responsible for any items of maintenance relating to the units or common
2280 elements.

2281 C. An action for breach of any warranty prescribed by this section shall ~~be commenced~~
2282 begin within (i) five years after the date such warranty period began or (ii) one year after the
2283 formation of any warranty review committee pursuant to subsection B of § ~~55-79.74~~ 55.1-xxx,
2284 whichever occurs last ~~occurs~~. However, no such action shall be maintained against the declarant
2285 unless a written statement by the claimant, or his agent, attorney, or representative, of the nature
2286 of the alleged defect has been sent to the declarant, by registered or certified mail, at his last
2287 known address, as reflected in the records of the Common Interest Community Board, more
2288 than six months prior to the ~~commencement~~ beginning of the action giving the declarant an
2289 opportunity to cure the alleged defect within a reasonable time, not to exceed five months.
2290 Sending the notice required by this subsection shall toll the statute of limitations for
2291 ~~commencing~~ beginning a breach of warranty action for a period not to exceed six months.

2292 D. If the initial period of declarant control has been extended in accordance with
2293 subsection B of § ~~55-79.74~~ 55.1-xxx, the warranty review committee ~~(, referred to in this section~~
2294 as "the committee,") shall have (i) subject to the provisions of subdivision 3, the irrevocable
2295 power as attorney-in-fact on behalf of the unit owners' association to assert or settle in the name
2296 of the unit owners' association any claims involving the declarant's warranty against structural
2297 defects with respect to all of the common elements and (ii) the authority to levy an additional

2298 assessment against all of the units in proportion to their respective undivided interests in the
2299 common elements pursuant to § ~~55-79.83~~ 55.1-xxx if the committee determines that the
2300 assessments levied by the unit owners' association are insufficient to enable the committee
2301 reasonably to perform its functions pursuant to this subsection. The committee or the declarant
2302 shall notify the governing body of the ~~county, city, or town~~ locality in which the condominium
2303 is located of the formation of the committee, within 30 days of its formation. Within 30 days
2304 after such notice, the local governing body or an agency designated by the local governing body
2305 shall advise the chair of the committee of any outstanding violations of applicable building
2306 codes, local ordinances, or other deficiencies of record. Members of the committee shall be
2307 insured, indemnified, and subject to liability to the same extent as officers or directors under the
2308 condominium instruments or applicable law. The unit owners' association shall provide
2309 sufficient funds reasonably necessary for the committee to perform the functions set out in this
2310 subsection and to:

2311 1. Engage an independent architect, engineer, legal counsel, and such other experts as
2312 the committee may reasonably determine;

2313 2. Investigate whether there exists any breach of the warranty as to any of the common
2314 elements. The committee shall document its findings and the evidence that supports such
2315 findings. Such findings and evidence shall be confidential and shall not be disclosed to the
2316 declarant without the consent of the committee; and

2317 3. Assert or settle in the name of the unit owners' association any claims involving the
2318 declarant's warranty on the common elements, provided that (i) the committee sends the
2319 declarant at least six months prior to the expiration of the statute of limitations a written
2320 statement pursuant to subsection C of the alleged nature of any defect in the common elements
2321 giving the declarant an opportunity to cure the alleged defect;; (ii) the declarant fails to cure the
2322 alleged defect within a reasonable time;; and (iii) the declarant control period or the statute of
2323 limitations has not expired.

2324 E. Within 45 days after the formation of the committee, the declarant shall deliver to the
2325 chair of the committee (i) a copy of the latest available approved plans and specifications for all
2326 improvements in the project or ~~as-build~~ as-built plans if available; (ii) all association insurance
2327 policies that are currently in force; (iii) any written unexpired warranties of the contractors,
2328 subcontractors, suppliers, and manufacturers applicable to the condominium; and (iv) a list of
2329 manufacturers of paints, roofing materials, and other similar materials if specified for use on the
2330 condominium property.

2331 **Drafting note: In subsection B, the phrase "in the case of a residential unit" is**
2332 **added to clarify that a warranty of habitability is only required for residential and not**
2333 **commercial units. In subsection D, the phrase "city, county, or town" is replaced with the**
2334 **term "locality" on the basis of § 1-221, which states that throughout the Code "'Locality'**
2335 **means a county, city, or town as the context may require." Technical changes are made.**

2336 § ~~55-79.80~~ 55.1-xxx. Control of common elements.

2337 A. Except to the extent prohibited, restricted, or limited by the condominium
2338 instruments, ~~and subject to any restrictions and limitations specified therein~~, the unit owners'
2339 association shall have the power to:

2340 1. Employ, dismiss, and replace agents and employees to exercise and discharge the
2341 powers and responsibilities of the ~~said~~ association arising under § ~~55-79.79~~ 55.1-xxx.

2342 2. Make or cause to be made additional improvements on and as a part of the common
2343 elements.

2344 3. Grant or withhold approval of any action by one or more unit owners or other persons
2345 entitled to the occupancy of any unit ~~which~~ that would change the exterior appearance of any
2346 unit or of any other portion of the condominium, or elect or provide for the appointment of an
2347 architectural control committee, the members of which must have the same qualifications as
2348 officers, to grant or withhold such approval.

2349 4. Acquire, hold, convey, and encumber title to real property, including ~~but not limited to~~
2350 condominium units, whether or not the association is incorporated.

2351 B. Except to the extent prohibited, restricted, or limited by the condominium
2352 instruments, ~~and subject to any restrictions and limitations specified therein~~, the executive ~~organ~~
2353 board of the unit owners' association, if any, and if not, then the unit owners' association itself,
2354 ~~shall have~~ has the irrevocable power as attorney-in-fact on behalf of all the unit owners and their
2355 successors in title with respect to the common elements, including ~~without limitation~~ the right,
2356 in the name of the unit owners' association, to (i) ~~to~~ grant easements through the common
2357 elements and accept easements benefiting all or any portion of the condominium ~~or any portion~~
2358 ~~thereof;~~; (ii) ~~to~~ assert, through litigation or otherwise, defend against, compromise, adjust, and
2359 settle any claims or actions related to common elements, other than claims against or actions
2360 involving the declarant during any period of declarant control reserved pursuant to subsection A
2361 of § ~~55-79.74, 55.1-xxx~~; and (iii) ~~to~~ apply for any governmental approvals under state and local
2362 law.

2363 C. This section shall not be construed to prohibit the grant, by the condominium
2364 instruments, of other powers and responsibilities to the unit owners' association or its executive
2365 ~~organ~~ board.

2366 **Drafting note: In subsections A and B, the first sentence is re-worded for clarity. In**
2367 **subdivision A 4, the phrase "but not limited to" is stricken following the term "including"**
2368 **and in subsection B, the phrase "without limitation" is stricken following the term**
2369 **"including" on the basis of § 1-218, which states that throughout the Code "'Includes'**
2370 **means includes, but not limited to." In subsections B and C, the term "executive organ" is**
2371 **changed to "executive board" for consistency with the term as it is defined in proposed §**
2372 **55.1-xxx [§ 55-79.41]. Technical changes are made.**

2373 § ~~55-79.80:04 55.1-xxx~~. Common elements; notice of pesticide application.

2374 ~~Unit~~ The unit owners' ~~associations~~ association shall post notice of all pesticide
2375 applications in or upon the common elements. Such notice shall consist of conspicuous signs
2376 placed in or upon the common elements where the pesticide will be applied at least ~~forty-eight~~
2377 48 hours prior to the application.

2378 **Drafting note: Technical changes.**

2379 § ~~55-79.80-1~~ 55.1-xxx. Tort and contract liability; judgment lien.

2380 A. An action for tort alleging a wrong done (i) by any agent or employee of the declarant
2381 or of the unit owners' association, or (ii) in connection with the condition of any portion of the
2382 condominium ~~which that~~ the declarant or the association has the responsibility to maintain, shall
2383 be brought against the declarant or the association, as ~~the case may be~~ appropriate. No unit
2384 owner shall be precluded from bringing such an action by virtue of his ownership of an
2385 undivided interest in the common elements or by reason of his membership in the association or
2386 his status as an officer.

2387 B. Unit owners other than the declarant shall not be liable for torts caused by agents or
2388 employees of the declarant within any convertible land or using any easement reserved in the
2389 declaration or created by § ~~55-79.65~~ 55.1-xxx or § ~~55-79.66~~ 55.1-xxx.

2390 C. An action arising from a contract made by or on behalf of the unit owners'
2391 association, or its executive ~~organ,~~ board or the unit owners as a group, shall be brought against
2392 the association, or against the declarant if the cause of action arose during the exercise by the
2393 declarant of control reserved pursuant to subsection A of § ~~55-79.74~~ 55.1-xxx. No unit owner
2394 shall be precluded from bringing such an action by reason of his membership in the association
2395 or his status as an officer.

2396 D. A judgment for money against the unit owners' association shall be a lien against any
2397 property owned by the association, and against each of the condominium units in proportion to
2398 the liability of each unit owner for common expenses as established pursuant to subsection D of
2399 § ~~55-79.83~~ 55.1-xxx, but not against any other property of any unit owner. A unit owner who
2400 pays a percentage of the total amount due under such judgment equal to such unit owner's
2401 liability for common expenses fixed pursuant to subsection D of § ~~55-79.83~~ 55.1-xxx shall be
2402 entitled to a release of any such judgment lien, and the association shall not be entitled to assess
2403 the unit for payment of the remaining amount due. Such judgment shall be otherwise subject to
2404 the provisions of § 8.01-458.

2405 **Drafting note: In subsection C, the term "executive organ" is changed to "executive**
2406 **board" for consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41].**

2407 **Technical changes are made.**

2408 § ~~55-79.80:2~~ 55.1-xxx. Suspension of services for failure to pay assessments; corrective
2409 action; assessment of charges for violations; notice; hearing; adoption and enforcement of rules
2410 and regulations.

2411 A. The unit owners' association shall have the power, to the extent the condominium
2412 instruments or the condominium's rules ~~duly adopted pursuant thereto and regulations~~ expressly
2413 ~~so~~ provide, to (i) suspend a unit owner's right to use facilities or services, including utility
2414 services, provided directly through the unit owners' association for nonpayment of assessments
2415 ~~which that~~ are more than 60 days past due, to the extent that access to the unit through the
2416 common elements is not precluded and provided that such suspension ~~shall~~ does not endanger
2417 the health, safety, or property of any unit owner, tenant, or occupant and (ii) assess charges
2418 against any unit owner for any violation of the condominium instruments or of the rules or
2419 regulations promulgated pursuant thereto for which such unit owner or his family members,
2420 tenants, guests, or other invitees are responsible.

2421 B. Before any action authorized in this section is taken, the unit owner shall be given a
2422 reasonable opportunity to correct the alleged violation after written notice of the alleged
2423 violation to the unit owner at the address required for notices of meetings pursuant to § ~~55-79.75~~
2424 55.1-xxx. If the violation remains uncorrected, the unit owner shall be given an opportunity to
2425 be heard and to be represented by counsel before the executive ~~organ~~ board or such other
2426 tribunal as the condominium instruments or its adopted rules ~~duly adopted pursuant thereto and~~
2427 regulations specify.

2428 Notice of such hearing, including the actions that may be taken by the unit owners'
2429 association in accordance with this section, shall, at least 14 days in advance ~~thereof~~, be hand
2430 delivered or mailed by registered or certified United States mail, return receipt requested, to
2431 such unit owner at the address required for notices of meetings pursuant to § ~~55-79.75~~ 55.1-xxx.

2432 Within seven days of the hearing, the hearing result shall be hand delivered or mailed by
2433 registered or certified mail, return receipt requested, to such unit owner at the address required
2434 for notices of meetings pursuant to § ~~55-79.75~~ 55.1-xxx.

2435 C. The amount of any charges ~~so~~ assessed shall not exceed \$50 for a single offense, or
2436 \$10 per diem for any offense of a continuing nature, and shall be treated as an assessment
2437 against such unit owner's condominium unit for the purpose of § ~~55-79.84~~ 55.1-xxx. However,
2438 the total charges for any offense of a continuing nature shall not be assessed for a period
2439 exceeding 90 days.

2440 D. The unit owners' association may file or defend legal action in general district or
2441 circuit court that seeks relief, including injunctive relief, arising from any violation of the
2442 condominium instruments or ~~duly~~ the condominium's adopted rules and regulations.

2443 E. After the date a lawsuit is filed in the general district or circuit court by (i) the unit
2444 owners' association, by and through its counsel, to collect the charges or obtain injunctive relief
2445 and correct the violation or (ii) the unit owner challenging any such charges, no additional
2446 charges shall accrue.

2447 If the court rules in favor of the unit owners' association, it shall be entitled to collect
2448 such charges from the date the action was filed as well as all other charges assessed pursuant to
2449 this section against the unit owner prior to the action. In addition, if the court finds that the
2450 violation remains uncorrected, the court may order the unit owner to abate or remedy the
2451 violation.

2452 In any suit filed in general district court pursuant to this section, the court may enter
2453 default judgment against the unit owner on the ~~unit owners' association's~~ sworn affidavit of the
2454 unit owners' association.

2455 F. This section shall not be construed to prohibit the grant, by the condominium
2456 instruments, of other powers and responsibilities to the unit owners' association or its executive
2457 ~~organ~~ board.

2458 **Drafting note: In the catchline and in subsections A and B, the phrase "and**
2459 **regulations" is inserted following the word "rules" for consistency with the existing**
2460 **language in subsection D. In subsections B and F, the term "executive organ" is changed**
2461 **to "executive board" for consistency with the term as it is defined in proposed § 55.1-xxx**
2462 **[§ 55-79.41]. Technical changes are made.**

2463 ~~§ 55-79.80:3 55.1-xxx. Power of unit owners' association to limit~~ Limitation of
2464 occupancy of a unit.

2465 ~~The unit owners' association shall have the power, to~~ To the extent expressly provided in
2466 the condominium instruments ~~expressly so provide, to~~ the unit owners' association may limit the
2467 number of persons who may occupy a unit as a dwelling. Such limitation shall be reasonable
2468 and shall comply with the provisions of ~~§ 55-79.52~~ applicable law, including the Virginia Fair
2469 Housing Law (§ 36-96.1 et seq.), the Uniform Statewide Building Code (§ 36-97 et seq.), and
2470 local ordinances.

2471 **Drafting note: The catchline is reworded to reflect language changes in the section,**
2472 **and the section is restructured for clarity. The cross-reference to existing § 55-79.52 is**
2473 **stricken because it contains a further cross-reference to the Virginia Fair Housing Law;**
2474 **instead, specific cross-references to the Virginia Fair Housing Law and Uniform Statewide**
2475 **Building Code are added. In addition, a reference to local ordinances, which may contain**
2476 **additional occupancy restrictions, is added for clarification.**

2477 § 55.1-xxx. Use of for sale sign in connection with resale.

2478 ~~K.~~ Except as expressly authorized in this chapter or in the condominium instruments or
2479 as otherwise provided by law, no unit owners' association shall:

2480 ~~1. Require~~ require the use of any for sale sign that is (i) a unit owners' association sign or
2481 (ii) a real estate sign that does not comply with the requirements of the Virginia Real Estate
2482 Board. A unit owners' association may, however, prohibit the placement of signs in the common
2483 elements and establish reasonable rules and regulations that regulate (a) the number of real
2484 estate signs to be located on real property upon which the owner has a separate ownership

2485 interest or a right of exclusive possession, so long as at least one real estate sign is permitted; (b)
2486 the geographical location of real estate signs on real property in which the owner has a separate
2487 ownership interest or a right of exclusive possession, so long as the location of the real estate
2488 signs complies with the requirements of the Virginia Real Estate Board; (c) the manner in which
2489 real estate signs are affixed to real property; and (d) the period of time after settlement when the
2490 real estate signs on such real property shall be removed; ~~or.~~

2491 **Drafting note: The language in this section is logically relocated from existing**
2492 **subdivision K 1 of § 55-79.97 because it deals with limitations placed upon unit**
2493 **associations regarding their ability to mandate the placement and use of for sale signs**
2494 **connected with the resale of a unit by a unit owner. Technical changes are made.**

2495 [§ 55.1-xxx. Designation of authorized representative.](#)

2496 ~~2. Require~~ [Except as expressly authorized in this chapter or in the condominium](#)
2497 [instruments or as otherwise provided by law, no unit owners' association shall require](#) any unit
2498 owner to execute a formal power of attorney if the unit owner designates a person licensed
2499 under the provisions of § 54.1-2106.1 as the unit owner's authorized representative, and the unit
2500 owners' association shall recognize such representation without a formal power of attorney,
2501 provided that the unit owners' association is given a written authorization signed by the unit
2502 owner designating such representative. Notwithstanding the foregoing, the requirements of ~~§ 55-~~
2503 ~~79.77.~~ [55.1-xxx](#) and the condominium instruments shall be satisfied before any such
2504 representative may exercise a vote on behalf of a unit owner as a proxy.

2505 **Drafting note: The language in this section is logically relocated from existing**
2506 **subdivision K 2 of § 55.1-xxx [§ 55-79.97] because it deals with limitations placed upon**
2507 **unit associations regarding their ability to interfere with a unit owner's designation of an**
2508 **authorized representative. Technical changes are made.**

2509 ~~§ 55-79.81~~ [55.1-xxx](#). Insurance.

2510 A. The condominium instruments may require the unit owners' association, or the
2511 executive ~~organ~~ [board](#) or managing agent on behalf of such association, to obtain:

2512 1. A master casualty policy affording fire and extended coverage in an amount
2513 consonant with the full replacement value of the structures within the condominium, or of such
2514 structures that in whole or in part comprise portions of the common elements.

2515 2. A master liability policy, in an amount specified by the condominium instruments,
2516 covering the unit owners' association, the executive ~~organ~~ board, if any, the managing agent, if
2517 any, all persons acting or who may come to act as agents or employees of any of the foregoing
2518 with respect to the condominium, and all unit owners and other persons entitled to occupy any
2519 unit or other portion of the condominium.

2520 3. Such other policies as may be required by the condominium instruments, including,
2521 ~~without limitation,~~ workers' compensation insurance, liability insurance on motor vehicles
2522 owned by the unit owners' association, and specialized policies covering lands or improvements
2523 in which the unit owners' association has or shares ownership or other rights.

2524 B. Any unit owners' association collecting assessments for common expenses shall
2525 obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring
2526 the unit owners' association against losses resulting from theft or dishonesty committed by the
2527 officers, directors, or persons employed by the unit owners' association, or committed by any
2528 common interest community manager or employees of the common interest community
2529 manager. Such bond or insurance policy shall provide coverage in an amount equal to the lesser
2530 of \$1 million or the amount of reserve balances of the unit owners' association plus one-fourth
2531 of the aggregate annual assessment of such unit owners' association. The minimum coverage
2532 amount shall be \$10,000. The executive ~~organ~~ board or common interest community manager
2533 may obtain such bond or insurance on behalf of the unit owners' association.

2534 C. When any policy of insurance has been obtained by or on behalf of the unit owners'
2535 association, written notice of ~~the such~~ obtainment ~~thereof~~ and of any subsequent changes ~~therein~~
2536 in or termination ~~thereof of the policy~~ shall be promptly furnished to each unit owner by the
2537 officer required to send notices of meetings of the unit owners' association. Such notices shall be
2538 sent in accordance with the provisions of subsection A of § ~~55-79.75~~ 55.1-xxx.

2539 **Drafting note: In subsections A and B, the term "executive organ" is changed to**
2540 **"executive board" for consistency with the term as it is defined in proposed § 55.1-xxx [§**
2541 **55-79.41]. In subdivision A 3, the phrase "without limitation" is stricken following the**
2542 **word "including" on the basis of § 1-218, which states that throughout the Code**
2543 **"'Includes' means includes, but not limited to." Technical changes are made.**

2544 [§ 55-79.82. Repealed.](#)

2545 **Drafting note: Repealed by Acts 1991, c. 497.**

2546 [§ 55-79.83](#) [55.1-xxx](#). Liability for common expenses; late fees.

2547 A. Except to the extent that the condominium instruments provide otherwise, any
2548 common expenses associated with the maintenance, repair, renovation, restoration, or
2549 replacement of any limited common element shall be specially assessed against the
2550 condominium unit to which that limited common element was assigned at the time such
2551 expenses were made or incurred. If the limited common element involved was assigned at that
2552 time to more than one condominium unit, however, such expenses shall be specially assessed
2553 against each such condominium unit equally so that the total of such special assessments equals
2554 the total of such expenses, except to the extent that the condominium instruments provide
2555 otherwise.

2556 B. To the extent that the condominium instruments expressly so provide, any other
2557 common expenses benefiting less than all of the condominium units, or caused by the conduct
2558 of less than all those entitled to occupy the same or by their licensees or invitees, shall be
2559 specially assessed against ~~the any~~ [the any](#) condominium unit ~~or units~~ involved, in accordance with such
2560 reasonable provisions as the condominium instruments may make for such cases. The executive
2561 ~~organ board~~ [organ board](#) may impose reasonable user fees.

2562 C. To the extent that the condominium instruments expressly so provide, (i) any
2563 common expenses paid or incurred in making available the same off-site amenities or paid
2564 subscription television service to some or all of the unit owners shall be assessed equally against
2565 the condominium units involved and (ii) any common expenses paid or incurred in providing

2566 metered utility services to some or all of the units shall be assessed against each condominium
2567 unit involved based on its actual consumption of such services.

2568 D. The amount of all common expenses not specially assessed pursuant to subsection A,
2569 B, or C ~~hereof~~ shall be assessed against the condominium units in proportion to the number of
2570 votes in the unit owners' association appertaining to each such unit, or, if such votes were
2571 allocated as provided in subsection B of § ~~55-79.77~~ 55.1-xxx, those common expense
2572 assessments shall be either in proportion to those votes or in proportion to the units' respective
2573 undivided interests in the common elements, whichever basis the condominium instruments
2574 specify. Such assessments shall be made by the unit owners' association annually, or more often
2575 if the condominium instruments so provide. No change in the number of votes in the unit
2576 owners' association appertaining to any condominium unit shall enlarge, diminish, or otherwise
2577 affect any liabilities arising from assessments made prior to such change.

2578 E. Except to the extent otherwise provided in the condominium instruments, if the
2579 executive ~~organ~~ board determines that the assessments levied by the unit owners' association are
2580 insufficient to cover the common expenses of the unit owners' association, the executive ~~organ~~
2581 ~~shall have the authority to~~ board may levy an additional assessment against all of the units in
2582 proportion to their respective undivided interests in the common elements. The executive ~~organ~~
2583 board shall give written notice ~~of any additional assessment~~ to the unit owners stating the
2584 amount of, the reasons ~~therefor~~ for, and the due date for payment of ~~such~~ any additional
2585 assessment. If the additional assessment is to be paid in a lump sum, payment shall be due and
2586 payable no earlier than 90 days after delivery or mailing of the notice.

2587 All unit owners shall be obligated to pay the additional assessment unless the unit
2588 owners by a majority of votes cast, in person or by proxy, at a meeting of the unit owners'
2589 association convened in accordance with the provisions of the condominium instruments within
2590 60 days of the delivery or mailing of the notice required by this subsection, rescind or reduce the
2591 additional assessment. No director or officer of the unit owners' association shall be liable for
2592 failure to perform his fiduciary duty if an additional assessment for the funds necessary for the

2593 director or officer to perform his fiduciary duty is rescinded by the unit owners' association in
2594 accordance with this subsection. The unit owners' association shall indemnify such director or
2595 officer against any damage resulting from any claimed breach of fiduciary duty ~~arising~~
2596 therefrom due to the assessment for the necessary funds rescinded by the unit owners'
2597 association in accordance with this subsection.

2598 F. ~~It remains the policy of this section that neither~~ Neither a unit owned by the declarant
2599 nor any other unit may be exempted from assessments made pursuant to this section by reason
2600 of the identity of the unit owner ~~thereof~~.

2601 G. All condominium instruments for condominiums created prior to January 1, 1981, are
2602 hereby validated notwithstanding noncompliance with the first sentence of subsection D ~~hereof~~,
2603 if they provide instead that the amount of all common expenses not specially assessed pursuant
2604 to subsection A, B, or C ~~hereof~~ shall be assessed against the condominium units in proportion to
2605 their respective undivided interests in the common elements.

2606 H. Except to the extent that the condominium instruments or the association's rules or
2607 regulations ~~promulgated pursuant thereto~~ provide otherwise, an executive ~~organ~~ board may
2608 impose a late fee, not to exceed the penalty provided for in § 58.1-3915, for any assessment or
2609 installment ~~thereof~~ that is not paid within 60 days of the due date for payment of such
2610 assessment or installment.

2611 **Drafting note: In subsection B, the phrase "or units" is stricken after the term**
2612 **"unit" on the basis of § 1-227, which states that throughout the Code any word used in the**
2613 **singular includes the plural. In subsections B, E, and H, the term "executive organ" is**
2614 **changed to "executive board" for consistency with the term as it is defined in proposed §**
2615 **55.1-xxx [§ 55-79.41]. Technical changes are made.**

2616 § ~~55-79.83-1~~ 55.1-xxx. Reserves for capital components.

2617 A. Except to the extent otherwise provided in the condominium instruments and unless
2618 the condominium instruments impose more stringent requirements, the executive ~~organ~~ board
2619 shall:

2620 1. Conduct a study at least once every five years ~~a study~~ to determine the necessity and
2621 amount of reserves required to repair, replace, and restore the capital components;

2622 2. Review the results of that study at least annually to determine if reserves are
2623 sufficient; and

2624 3. Make any adjustments the executive ~~organ~~ board deems necessary to maintain
2625 reserves, as appropriate.

2626 B. To the extent that the reserve study conducted in accordance with this section
2627 indicates a need to budget for reserves, the unit owners' association budget shall include,
2628 without limitations:

2629 1. The current estimated replacement cost, estimated remaining life, and estimated useful
2630 life of the capital components;

2631 2. As of the beginning of the fiscal year for which the budget is prepared, the current
2632 amount of accumulated cash reserves set aside, to repair, replace, or restore the capital
2633 components and the amount of the expected contribution to the reserve fund for that fiscal year;
2634 and

2635 3. A general statement describing the procedures used for the estimation and
2636 accumulation of cash reserves pursuant to this section and the extent to which the unit owners'
2637 association is funding its reserve obligations consistent with the study currently in effect.

2638 **Drafting note: In subsection A, the term "executive organ" is changed to "executive**
2639 **board" for consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41]. In**
2640 **subsection B, the phrase "without limitations" is stricken following the term "include" on**
2641 **the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but**
2642 **not limited to." Technical changes are made.**

2643 ~~§ 55-79.84~~ 55.1-xxx. Lien for assessments.

2644 A. The unit owners' association shall have a lien on ~~every~~ each condominium unit for
2645 unpaid assessments levied against that condominium unit in accordance with the provisions of
2646 this chapter and all lawful provisions of the condominium instruments. The ~~said~~ lien, once

2647 perfected, shall be prior to all other liens and encumbrances except (i) real estate tax liens on
2648 that condominium unit, (ii) liens and encumbrances recorded prior to the recordation of the
2649 declaration, and (iii) sums unpaid on any first mortgages or first deeds of trust recorded prior to
2650 the perfection of ~~said~~ such lien for assessments and securing institutional lenders. The
2651 provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens.

2652 B. Notwithstanding any other provision of this section, or any other provision of law
2653 requiring documents to be recorded in the miscellaneous lien books or the deed books in the
2654 clerk's office of any court, on or after July 1, 1974, all memoranda of liens arising under this
2655 section shall, in the discretion of the clerk, be recorded in the miscellaneous lien books or the
2656 deed books in such clerk's office. Any such memorandum shall be indexed in the general index
2657 to deeds, and such general index shall identify the lien as a lien for condominium assessments.

2658 C. ~~The unit owners' association, in~~ In order to perfect the lien given by this section, the
2659 unit owners' association shall file a memorandum verified by the oath of the principal officer of
2660 the unit owners' association, or such other officer as the condominium instruments may specify,
2661 before the expiration of 90 days from the time the first such assessment became due and
2662 payable. The memorandum shall be filed in the clerk's office of the circuit court in the county or
2663 city in which such condominium is situated, ~~a memorandum, verified by the oath of the~~
2664 ~~principal officer of the unit owners' association, or such other officer or officers as the~~
2665 ~~condominium instruments may specify, which contains.~~ The memorandum shall contain the
2666 following:

2667 1. A description of the condominium unit in accordance with the provisions of § ~~55-~~
2668 ~~79.47~~ 55.1-xxx.

2669 2. The name or names of the persons constituting the unit owners of that condominium
2670 unit.

2671 3. The amount of unpaid assessments currently due or past due together with the date
2672 when each fell due.

2673 4. The date of issuance of the memorandum.

2674 ~~It shall be the duty of the~~ The clerk in whose office such memorandum is filed ~~as~~
2675 ~~hereinabove provided to~~ shall record and index the ~~same~~ memorandum as provided in
2676 subsection B, in the names of the persons identified ~~therein~~ in such memorandum as well as in
2677 the name of the unit owners' association. The cost of recording such memorandum shall be
2678 taxed against the person found liable in any judgment or decree enforcing such lien.

2679 D. No suit to enforce any lien perfected under subsection C shall be brought or action to
2680 foreclose any lien perfected under subsection I shall be initiated after 36 months from the time
2681 when the memorandum of lien was recorded; however, the filing of a petition to enforce any
2682 such lien in any suit ~~wherein~~ in which such petition may be properly filed shall be regarded as
2683 the institution of a suit under this section. Nothing ~~herein~~ in this subsection shall extend the time
2684 within which any such lien may be perfected.

2685 E. The judgment or decree in an action brought pursuant to this section shall include,
2686 ~~without limitation,~~ reimbursement for costs and ~~attorneys'~~ attorney fees of the prevailing party.
2687 If the association prevails, it may also recover interest at the legal rate for the sums secured by
2688 the lien from the time each such sum became due and payable.

2689 F. When payment or satisfaction is made of a debt secured by the lien perfected by
2690 subsection C, ~~said~~ such lien shall be released in accordance with the provisions of § ~~55-66.3~~
2691 55.1-xxx. Any lien ~~which~~ that is not so released shall subject the lien creditor to the penalty set
2692 forth in subdivision A 1 of § ~~55-66.3~~ 55.1-xxx. For the purposes of that section, the principal
2693 officer of the unit owners' association, or such other officer ~~or officers~~ as the condominium
2694 instruments may specify, shall be deemed the duly authorized agent of the lien creditor.

2695 G. Nothing in this section shall be construed to prohibit actions at law to recover sums
2696 for which subsection A creates a lien, maintainable pursuant to § ~~55-79.53~~ 55.1-xxx.

2697 H. Any unit owner or purchaser of a condominium unit, having executed a contract for
2698 the disposition of ~~the same~~ such condominium unit, shall be entitled upon request to a
2699 recordable statement setting forth the amount of unpaid assessments currently levied against that
2700 unit. Such request shall be in writing, directed to the principal officer of the unit owners'

2701 association or to such other officer as the condominium instruments may specify. Failure to
2702 furnish or make available such a statement within 10 days of the receipt of such request shall
2703 extinguish the lien created by subsection A as to the condominium unit involved. Such
2704 statement shall be binding on the unit owners' association, the executive ~~organ~~ board, and every
2705 unit owner. Payment of a fee not exceeding \$10 may be required as a prerequisite to the
2706 issuance of such a statement if the condominium instruments so provide.

2707 I. At any time after perfecting the lien pursuant to this section, the unit owners'
2708 association may sell the unit at public sale, subject to prior liens. For purposes of this section,
2709 the unit owners' association shall have the power both to sell and convey the unit, and shall be
2710 deemed the unit owner's statutory agent for the purpose of transferring title to the unit. A
2711 nonjudicial foreclosure sale shall be conducted in compliance with the following:

2712 1. The unit owners' association shall give notice to the unit owner prior to advertisement
2713 required by subdivision 4. The notice shall specify (i) the debt secured by the perfected lien; (ii)
2714 the action required to satisfy the debt secured by the perfected lien; (iii) the date, not less than
2715 60 days from the date the notice is given to the unit owner, by which the debt secured by the lien
2716 must be satisfied; and (iv) that failure to satisfy the debt secured by the lien on or before the date
2717 specified in the notice may result in the sale of the unit. The notice shall further inform the unit
2718 owner of the right to bring a court action in the circuit court of the county or city where the
2719 condominium is located to assert the nonexistence of a debt or any other defense of the unit
2720 owner to the sale.

2721 2. After expiration of the 60-day notice period provided in subdivision 1, the unit
2722 owners' association may appoint a trustee to conduct the sale. The appointment of the trustee
2723 shall be filed in the clerk's office of the circuit court in the county or city in which the
2724 condominium is located. ~~It shall be the duty of the~~ The clerk in whose office such appointment
2725 is filed ~~to shall~~ record and index the ~~same~~ appointment as provided in subsection C, in the
2726 names of the persons identified therein as well as in the name of the unit owners' association.

2727 The unit owners' association, at its option, may from time to time remove the trustee and appoint
2728 a successor trustee.

2729 3. If the unit owner meets the conditions specified in this subdivision prior to the date of
2730 the foreclosure sale, the unit owner shall have the right to have enforcement of the perfected lien
2731 discontinued prior to the sale of the unit. Those conditions are that the unit owner: (a) satisfy the
2732 debt secured by lien that is the subject of the nonjudicial foreclosure sale and (b) pays all
2733 expenses and costs incurred in perfecting and enforcing the lien, including ~~but not limited to~~
2734 advertising costs and reasonable ~~attorneys'~~ attorney fees.

2735 4. In addition to the advertisement required by subdivision 5, the unit owners'
2736 association shall give written notice of the time, date, and place of any proposed sale in
2737 execution of the lien, and ~~including shall include~~ the name, address, and telephone number of
2738 the trustee, by personal delivery or by mail to (i) the present owner of the ~~property~~
2739 condominium unit to be sold at his last known address as such owner and address appear in the
2740 records of the unit owners' association, (ii) any lienholder who holds a note against the ~~property~~
2741 condominium unit secured by a deed of trust recorded at least 30 days prior to the proposed sale
2742 and whose address is recorded with the deed of trust, and (iii) any assignee of such a note
2743 secured by a deed of trust provided the assignment and address of the assignee are likewise
2744 recorded at least 30 days prior to the proposed sale. Mailing a copy of the advertisement or the
2745 notice containing the same information to the owner by certified or registered mail no less than
2746 14 days prior to such sale and to the lienholders and their assigns, at the addresses noted in the
2747 memorandum of lien, by ordinary mail no less than 14 days prior to such sale, shall be a
2748 sufficient compliance with the requirement of notice.

2749 5. The advertisement of sale by the unit owners' association shall be in a newspaper
2750 having a general circulation in the ~~city or county wherein~~ locality in which the ~~property~~
2751 condominium unit to be sold, or any portion ~~thereof of such unit,~~ lies is located pursuant to the
2752 following provisions:

2753 a. The unit owners' association shall advertise once a week for four successive weeks;
2754 however, if the property condominium unit or some portion ~~thereof~~ of such unit is located in a
2755 city or in a county immediately contiguous to a city, publication of the advertisement five
2756 different days, which may be consecutive days, shall be deemed adequate. The sale shall be held
2757 on any day following the day of the last advertisement that is no earlier than eight days
2758 following the first advertisement nor more than 30 days following the last advertisement.

2759 b. Such advertisement shall be placed in that section of the newspaper where legal
2760 notices appear or where the type of property being sold is generally advertised for sale. The
2761 advertisement of sale, in addition to such other matters as the unit owners' association finds
2762 appropriate, shall set forth a description of the property condominium unit to be sold, which
2763 description need not be as extensive as that contained in the deed of trust, but shall identify the
2764 property condominium unit by street address, if any, or, if none, shall give the general location
2765 of the property condominium unit with reference to streets, routes, or known landmarks. Where
2766 available, tax map identification may be used but is not required. The advertisement shall also
2767 include the date, time, place, and terms of sale and the name of the unit owners' association. ~~It~~
2768 The advertisement shall set forth the name, address, and telephone number of the representative,
2769 agent, or attorney who may be able to respond to inquiries concerning the sale.

2770 c. In addition to the advertisement required by subdivisions a and b ~~above~~, the unit
2771 owners' association may give such other further and different advertisement as the association
2772 finds appropriate.

2773 6. In the event of postponement of a sale, which postponement shall be at the discretion
2774 of the unit owners' association, advertisement of such postponed sale shall be in the same
2775 manner as the original advertisement of sale.

2776 7. Failure to comply with the requirements for advertisement contained in this section
2777 shall, upon petition, render a sale of the property condominium unit voidable by the court.

2778 8. In the event of a sale, the unit owners' association shall have the following powers and
2779 duties:

2780 a. Written one-price bids may be made and shall be received by the trustee from the unit
2781 owners' association or any person for entry by announcement at the sale. Any person other than
2782 the trustee may bid at the foreclosure sale, including a person who has submitted a written one-
2783 price bid. Upon request to the trustee, any other bidder in attendance at a foreclosure sale shall
2784 be permitted to inspect written bids. Unless otherwise provided in the condominium
2785 instruments, the unit owners' association may bid to purchase the unit at a foreclosure sale. The
2786 unit owners' association may own, lease, encumber, exchange, sell, or convey the unit.
2787 Whenever the written bid of the unit owners' association is the highest bid submitted at the sale,
2788 such written bid shall be filed by the trustee with his account of sale required under subdivision
2789 1 10 of this ~~section~~ subsection and § 64.2-1309. The written bid submitted pursuant to this
2790 subsection may be prepared by the unit owners' association, or its agent or attorney.

2791 b. The unit owners' association may require of any bidder at any sale a cash deposit of as
2792 much as 10 percent of the sale price before his bid is received, which shall be refunded to him if
2793 the property condominium unit is not sold to him. The deposit of the successful bidder shall be
2794 applied to his credit at settlement, or if such bidder fails to complete his purchase promptly, the
2795 deposit shall be applied to pay the costs and expenses of the sale, and the balance, if any, shall
2796 be retained by the unit owners' association in connection with that sale.

2797 c. The unit owners' association shall receive and receipt for the proceeds of sale, no
2798 purchaser being required to see to the application of the proceeds, and apply the same in the
2799 following order: first, to the reasonable expenses of sale, including reasonable ~~attorneys'~~
2800 attorney fees; second, to the satisfaction of all taxes, levies, and assessments, with costs and
2801 interest; third, to the satisfaction of the lien for the unit owners' assessments; fourth, to the
2802 satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay
2803 the residue of the proceeds to the unit owner or his assigns; 2 provided, however, that the
2804 association as to such residue shall not be bound by any inheritance, devise, conveyance,
2805 assignment, or lien of or upon the unit owner's equity, without actual notice ~~thereof of such~~
2806 encumbrance prior to distribution.

2807 9. The trustee shall deliver to the purchaser a trustee's deed conveying the unit with
2808 special warranty of title. The trustee shall not be required to take possession of the ~~property~~
2809 condominium unit prior to the sale ~~thereof~~ or to deliver possession of the unit to the purchaser at
2810 the sale.

2811 10. The trustee shall file an accounting of the sale with the commissioner of accounts
2812 pursuant to § 64.2-1309 and every account of a sale shall be recorded pursuant to § 64.2-1310.
2813 In addition, the accounting shall be made available for inspection and copying pursuant to § ~~55-~~
2814 ~~79.74:1~~ 55.1-xxx upon the written request of the prior unit owner, current unit owner, or any
2815 holder of a recorded lien against the unit at the time of the sale. The unit owners' association
2816 shall maintain a copy of the accounting for at least 12 months following the foreclosure sale.

2817 11. If the sale of a unit is made pursuant to this subsection ~~I~~ and the accounting is made
2818 by the trustee, the title of the purchaser at such sale shall not be disturbed unless within 12
2819 months from the confirmation of the accounting by the commissioner of accounts, the sale is set
2820 aside by the court or an appeal is allowed by the Supreme Court of Virginia, and a decree is
2821 therein entered requiring such sale to be set aside.

2822 **Drafting note: For consistency throughout the section, the word "property" is**
2823 **replaced with "condominium unit" or "unit," as appropriate. In subsections C and F, the**
2824 **phrase "or officers" is stricken following the term "officer" on the basis of § 1-227, which**
2825 **states that throughout the Code any word used in the singular includes the plural. In**
2826 **subsection C, language is re-organized for clarity. In subsection E, the phrase " without**
2827 **limitation" is stricken following the word "include," and in subdivision I 3, the phrase**
2828 **"but not limited to" is stricken after the word "including" on the basis of § 1-218, which**
2829 **states that throughout the Code "'Includes' means includes, but not limited to." In**
2830 **subsection H, the term "executive organ" is changed to "executive board" for consistency**
2831 **with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41]. In subdivision I 5, the**
2832 **phrase "county or city" is replaced with the word "locality" on the basis of § 1-221, which**

2833 states that throughout the Code "'Locality' means a county, city, or town as the context
2834 may require." Technical changes are made.

2835 § ~~55-79.84:01~~ 55.1-xxx. Notice of sale under deed of trust.

2836 In accordance with the provisions of § 15.2-979, the unit owners' association shall be
2837 given notice whenever a condominium unit becomes subject to a sale under a deed of trust.
2838 Upon receipt of such notice, the executive ~~organ~~ board, on behalf of the unit owners'
2839 association, shall exercise whatever due diligence it deems necessary with respect to the unit
2840 subject to a sale under a deed of trust to protect the interests of the unit owners' association.

2841 **Drafting note: The term "executive organ" is changed to "executive board" for**
2842 **consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41].**

2843 § ~~55-79.84:1~~ 55.1-xxx. Bond to be posted by declarant.

2844 A. The declarant of a condominium containing units ~~which~~ that are required by this
2845 chapter to be registered with the Common Interest Community Board shall post a bond in favor
2846 of the unit owners' association with good and sufficient surety, in a sum equal to \$1,000 per
2847 unit, except that such sum shall not be less than \$10,000, nor more than \$100,000. Such bond
2848 shall be filed with the Common Interest Community Board and shall be maintained for so long
2849 as the declarant owns more than 10 percent of the units in the condominium or, if the declarant
2850 owns less than 10 percent of the units in the condominium, until the declarant is current in the
2851 payment of assessments. However, the Board shall return a bond where the declarant owns one
2852 unit in a condominium containing less than 10 units, provided such declarant is current in the
2853 payment of assessments.

2854 B. No bond shall be accepted for filing unless it is with a surety company authorized to
2855 do business in the Commonwealth, or by such other surety as is satisfactory to the Board, and
2856 such bond shall be conditioned upon the payment of all assessments levied against
2857 condominium units owned by the declarant. The Board may accept a letter of credit in lieu of
2858 the bond contemplated by this section.

2859 | The Board may promulgate reasonable regulations ~~which~~ that govern the return of bonds
2860 | submitted in accordance with this section.

2861 | **Drafting note: Technical changes.**

2862 | § ~~55-79.85~~ 55.1-xxx. Restraints on alienation.

2863 | If the condominium instruments create any rights of first refusal or other restraints on
2864 | free alienability of the condominium units, such rights and restraints ~~shall be~~ are void unless the
2865 | condominium instruments make provision for promptly furnishing to any unit owner or
2866 | purchaser requesting ~~the same~~ such rights and restraints a recordable statement certifying to any
2867 | waiver of, or failure or refusal to exercise, such rights and restraints, in all cases where such
2868 | waiver, failure, or refusal does in fact occur. Failure or refusal to furnish promptly such a
2869 | statement in such circumstances in accordance with the provisions of the condominium
2870 | instruments ~~shall~~ make all such rights and restraints inapplicable to any disposition of a
2871 | condominium unit in contemplation of which such statement was requested. Any such statement
2872 | shall be binding on the unit owners' association ~~of unit owners~~, the executive ~~organ~~ board, and
2873 | every unit owner. Payment of a fee not exceeding ~~twenty-five dollars~~ \$25 may be required as a
2874 | prerequisite to the issuance of such a statement if the condominium instruments so provide.

2875 | **Drafting note: The term "executive organ" is changed to "executive board" for**
2876 | **consistency with the term as it is defined in proposed § 55.1-xxx [§ 55-79.41]. Technical**
2877 | **changes are made.**

2878 | Article 4.

2879 | Administration of Chapter; Sale, ~~ete.~~ Etc., of Condominium Units.

2880 | **Drafting note: Existing Article 4, containing provisions related to the**
2881 | **administration of the Virginia Condominium Act and sale of condominium units, is**
2882 | **retained as proposed Article 4. Existing § 55-79.98 is relocated to the beginning of Article 4**
2883 | **so that the powers and duties of the Common Interest Community Board are logically**
2884 | **placed near proposed § 55.1-xxx [§ 55-79.86], which states that the Common Interest**
2885 | **Community Board is the administrative agency for this chapter. Existing §§ 55-79.97**

2886 through 55-79.97:3 are relocated to proposed Article 5 for consistency with the
2887 organization of the Property Owners' Association Act (§ 55.1-xxx et seq.), which has a
2888 stand-alone article for resale disclosure provisions.

2889 § ~~55-79.86~~ 55.1-xxx. ~~Administrative agency~~ Common Interest Community Board.

2890 This chapter shall be administered by the Common Interest Community Board ~~which~~
2891 ~~hereinafter is called the agency~~.

2892 **Drafting note: Throughout the article, the Common Interest Community Board is**
2893 **referred to by its full name because the Common Interest Community Board falls under**
2894 **the purview of the Department of Professional and Occupational Regulation, a state**
2895 **agency, and so the term "agency" was unnecessarily confusing and inaccurate.**

2896 § ~~55-79.98~~ 55.1-xxx. General powers and duties of the Common Interest Community
2897 Board.

2898 A. The ~~agency~~ Common Interest Community Board shall prescribe reasonable ~~rules and~~
2899 regulations, which shall be adopted, amended, or repealed in compliance with law applicable to
2900 the administrative procedure of agencies of government. The ~~rules and~~ regulations shall include
2901 ~~but not be limited to~~ provisions for advertising standards to assure full and fair disclosure,
2902 provisions for operating procedures, and other ~~rules and~~ regulations as are necessary and proper
2903 to accomplish the purpose of this chapter.

2904 B. The ~~agency~~ Common Interest Community Board by ~~rule~~ regulation or by an order,
2905 after reasonable notice and hearing, may require the filing of advertising material relating to
2906 condominiums prior to its distribution.

2907 C. If it appears that a person has engaged or is about to engage in an act or practice
2908 constituting a violation of a provision of this chapter, or ~~a rule~~ Common Interest Community
2909 Board regulation or order ~~hereunder~~, the ~~agency~~ Common Interest Community Board, with or
2910 without prior administrative proceedings, may bring an action in the circuit court of the county
2911 or city ~~or county~~ in which any portion of the condominium is located to enjoin the acts or
2912 practices and to enforce compliance with this chapter or any ~~rule~~ Common Interest Community

2913 Board regulation or order ~~hereunder~~. Upon proper showing, injunctive relief ~~of or~~ temporary
2914 restraining orders shall be granted. The ~~agency~~ Common Interest Community Board is not
2915 required to post a bond in any court proceedings or prove that ~~any no~~ other adequate remedy at
2916 law exists.

2917 D. With respect to any lawful process served upon the ~~agency~~ Common Interest
2918 Community Board pursuant to the appointment made in accordance with subdivision A 1 of §
2919 ~~55-79.89~~ 55.1-xxx, the ~~agency~~ Common Interest Community Board shall forthwith cause the
2920 same to be sent by registered or certified mail to any of the principals, officers, directors,
2921 partners, or trustees of the declarant listed in the application for registration at the last address
2922 listed in such application or ~~any the most recent~~ annual report.

2923 E. The ~~agency~~ Common Interest Community Board may intervene in any suit involving
2924 the declarant. In any suit by or against a declarant involving a condominium, the declarant shall
2925 promptly furnish the ~~agency~~ Common Interest Community Board notice of the suit and copies
2926 of all pleadings.

2927 F. The ~~agency~~ Common Interest Community Board may:

- 2928 1. Accept registrations filed in other states or with the federal government;
2929 2. Contract with similar agencies in ~~this the~~ Commonwealth or other jurisdictions to
2930 perform investigative functions; and
2931 3. Accept grants in aid from any governmental source.

2932 G. The ~~agency~~ Common Interest Community Board shall cooperate with similar
2933 agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public
2934 offering statements, advertising standards, ~~rules regulations~~, and common administrative
2935 practices.

2936 **Drafting note: Throughout the section, the term "agency" is replaced with**
2937 **"Common Interest Community Board;" the Common Interest Community Board falls**
2938 **under the purview of the Department of Professional and Occupational Regulation, a state**
2939 **agency, and so the term "agency" was unnecessarily confusing and inaccurate. In**

2940 subsection A, the phrase "but not be limited to" is stricken following the word "include"
2941 on the basis of § 1-218, which states that throughout the Code "'Includes' means includes,
2942 but not limited to." In subsections A, B, C, and G, the word "rule" or "rules" is stricken
2943 prior to the word "regulation" or "regulations" because an administrative agency
2944 promulgates regulations, not rules. In subsection D, the word "any" prior to the phrase
2945 "annual report" is replaced with "the most recent" because that report is most likely to
2946 contain an accurate address for notification. Technical changes are made.

2947 § ~~55-79.87~~ 55.1-xxx. Exemptions from certain provisions of article.

2948 A. Unless the method of offer or disposition is adopted for the purpose of evasion of this
2949 chapter, the provisions of §§ ~~55-79.88~~ 55.1-xxx through ~~55-79.93~~ 55.1-xxx, subsections ~~A, B~~
2950 and ~~C, D~~ of § ~~55-79.94~~ 55.1-xxx, and ~~§ 55-79.97~~ §§ 55.1-xxx [resale by purchaser; contract
2951 disclosure; right of cancellation] and 55.1-xxx [contents of resale certificate; delivery] do not
2952 apply to:

2953 1. Dispositions pursuant to court order;
2954 2. Dispositions by any government or government agency;
2955 3. Offers by the declarant on nonbinding reservation agreements;
2956 4. Dispositions in a residential condominium in which there are three or fewer units, so
2957 long as the condominium instruments do not reserve to the declarant the right to create
2958 additional condominium units; or

2959 5. A disposition of a unit by a sale at an auction, where a current public offering
2960 statement or resale certificate was made available as part of an auction package for prospective
2961 purchasers prior to the auction sale.

2962 B. In cases of dispositions in a condominium where all units are restricted to
2963 nonresidential use, the provisions of §§ ~~55-79.88~~ 55.1-xxx through ~~55-79.95~~ 55.1-xxx shall not
2964 apply, unless the method of offer or disposition is adopted for the purpose of evasion of this
2965 chapter.

2966 **Drafting note: Technical changes.**

2967 | § ~~55-79.87:1~~ 55.1-xxx. Rental of units.

2968 | A. Except as expressly authorized in this chapter or in the condominium instruments or
2969 | as otherwise provided by law, no unit owners' association shall:

2970 | 1. Condition or prohibit the rental of a unit to a tenant by a unit owner or make an
2971 | assessment or impose a charge except as provided in § ~~55-79.42:1~~ 55.1-xxx;

2972 | 2. Charge a rental fee, application fee, or other processing fee of any kind in excess of
2973 | \$50 during the term of any lease;

2974 | 3. Charge an annual or monthly rental fee or any other fee not expressly authorized in §
2975 | ~~55-79.42:1~~ 55.1-xxx;

2976 | 4. Require the unit owner to use a lease or an addendum to the lease prepared by the unit
2977 | owners' association;

2978 | 5. Charge any deposit from the unit owner or the tenant of the unit owner; or

2979 | 6. Have the authority to evict a tenant of any unit owner or to require any unit owner to
2980 | execute a power of attorney authorizing the unit owners' association to so evict. However, if the
2981 | unit owner designates a person licensed under the provisions of § 54.1-2106.1 as the unit
2982 | owner's authorized representative with respect to any lease, the unit owners' association shall
2983 | recognize such representation without a formal power of attorney, provided that the unit owners'
2984 | association is given a written authorization signed by the unit owner designating such
2985 | representative. Notwithstanding ~~the foregoing any other provision of this subdivision~~, the
2986 | requirements of § ~~55-79.77~~ 55.1-xxx and the condominium instruments shall be satisfied before
2987 | any such representative may exercise a vote on behalf of a unit owner as a proxy.

2988 | B. The unit owners' association may require the unit owner to provide the unit owners'
2989 | association with the names and contact information of the tenants and authorized occupants
2990 | under such lease and of any authorized agent of the unit owner; and vehicle information for such
2991 | tenants or authorized occupants. The unit owners' association may require the unit owner to
2992 | provide the unit owners' association with the tenant's ~~acknowledgement~~ acknowledgment of and
2993 | consent to any rules and regulations of the unit owners' association.

2994 C. The provisions of this section shall not apply to units owned by the unit owners'
2995 association.

2996 **Drafting note: Technical changes.**

2997 § ~~55-79.88~~ 55.1-xxx. Limitations on dispositions of units.

2998 Unless exempt by § ~~55-79.87~~ 55.1-xxx:

2999 1. No declarant may offer or dispose of any interest in a condominium unit located in
3000 ~~this the~~ Commonwealth, nor offer or dispose of in ~~this the~~ Commonwealth ~~of~~ any interest in a
3001 condominium unit located ~~without this~~ outside of the Commonwealth prior to the time the
3002 condominium including such unit is registered in accordance with this chapter.

3003 2. No declarant may dispose of any interest in a condominium unit unless he delivers to
3004 the purchaser a current public offering statement by the time of such disposition and such
3005 disposition is expressly and without qualification or condition subject to cancellation by the
3006 purchaser within five calendar days from the contract date of the disposition or delivery of the
3007 current public offering statement, whichever is later. If the purchaser elects to cancel, he may do
3008 so by notice ~~thereof of such cancellation~~ hand-delivered or sent by United States mail, return
3009 receipt requested, to the declarant. Such cancellation shall be without penalty, and any deposit
3010 made by the purchaser shall be promptly refunded in its entirety.

3011 3. The purchaser's right to cancel the purchase contract pursuant to subdivision 2 shall be
3012 set forth on the first page of the purchase contract in boldface print of not less than 12 point
3013 type.

3014 4. The prospective purchaser may cancel by written notice, hand-delivered or sent by
3015 United States mail, return receipt requested, to the declarant or to any sales agent of the
3016 declarant at any time prior to the formation of a contract for the sale or lease of a condominium
3017 unit or an interest in such unit. Such agreement shall not contain any provision for waiver or any
3018 other provision in derogation of the rights of the prospective purchaser as contemplated by this
3019 section, nor shall any such provision be a part of any ancillary agreement.

3020 **Drafting note: Proposed subdivision 4 contains substantive language logically**
3021 **relocated from the definition of "nonbinding reservation agreement" in proposed § 55.1-**
3022 **xxx [§ 55-79.41] to this section, which contains provisions related to disposition of units.**

3023 **Technical changes are made.**

3024 § ~~55-79.89~~ 55.1-xxx. Application for registration; fee.

3025 A. The application for registration of the condominium shall be filed as prescribed by the
3026 agency's Common Interest Community Board's regulations and shall contain the following
3027 documents and information:

3028 1. An irrevocable appointment of the ~~agency~~ Common Interest Community Board to
3029 receive service of any lawful process in any noncriminal proceeding arising under this chapter
3030 against the applicant or his personal representative if nonresidents of the Commonwealth;

3031 2. The states or jurisdictions in which an application for registration or similar document
3032 has been filed; and any adverse order, judgment, or decree entered in connection with the
3033 condominium by the regulatory authorities in each jurisdiction or by any court;

3034 3. The applicant's name, ~~and~~ address, ~~and~~; the form, date, and jurisdiction ~~or of~~ of
3035 organization; and the address of each of its offices in ~~this~~ the Commonwealth;

3036 4. The name, address, and principal occupation for the past five years of every officer of
3037 the applicant or person occupying a similar status or performing similar functions; ~~and~~ and the
3038 extent and nature of his interest in the applicant or the condominium, as of a specified date
3039 within 30 days of the filing of the application;

3040 5. A statement, in a form acceptable to the ~~agency~~ Common Interest Community Board,
3041 of the condition of the title to the condominium project, including encumbrances, as of a
3042 specified date within 30 days of the date of application by a title opinion of a licensed attorney;
3043 not a salaried employee, officer, or director of the applicant or owner, or by other evidence of
3044 title acceptable to the ~~agency~~ Common Interest Community Board;

3045 6. Copies of the instruments ~~which that~~ will be delivered to a purchaser to evidence his
3046 interest in the unit and of the contracts and other agreements ~~which that~~ a purchaser will be
3047 required to agree to or sign;

3048 7. Copies of any management agreements, employment contracts, or other contracts or
3049 agreements affecting the use, maintenance, or access of all or a part of the condominium;

3050 8. A statement of the zoning and other governmental regulations affecting the use of the
3051 condominium, including the site plans and building permits and their status, and also of any
3052 existing tax and existing or proposed special taxes or assessments ~~which that~~ affect the
3053 condominium;

3054 9. A narrative description of the promotional plan for the disposition of the units in the
3055 condominium;

3056 10. Plats and plans of the condominium that comply with the provisions of § ~~55-79.58~~
3057 55.1-xxx other than the certification requirements ~~thereof~~, and ~~which that~~ show all units and
3058 buildings containing units to be built anywhere within the submitted land other than within the
3059 boundaries of any convertible lands, except that the ~~agency~~ Common Interest Community Board
3060 may establish by regulation or order requirements in lieu of the provisions of § ~~55-79.58~~ 55.1-
3061 xxx for plats and plans of a condominium located outside ~~this the~~ Commonwealth;

3062 11. The proposed public offering statement;

3063 12. Any bonds required to be posted pursuant to the provisions of this chapter; ~~and~~

3064 13. A current financial statement or other documentation to demonstrate the declarant's
3065 financial ability to complete all proposed improvements on the condominium; and

3066 14. Any other information, including any current financial statement, which the agency
3067 by its that the Common Interest Community Board's regulations ~~requires~~ require for the
3068 protection of purchasers.

3069 B. If the declarant registers additional units to be offered for disposition in the same
3070 condominium, he may consolidate the subsequent registration with any earlier registration
3071 offering units in the condominium for disposition under the same promotional plan.

3072 C. The declarant shall immediately report any material changes in the information
3073 contained in an application for registration.

3074 D. Each application shall be accompanied by a fee in an amount established by the
3075 [agency Common Interest Community Board](#) pursuant to § 54.1-113. All fees shall be remitted
3076 by the [agency Common Interest Community Board](#) to the State Treasurer; and shall be ~~placed to~~
3077 ~~the credit of~~ credited to the Common Interest Community Management Information Fund
3078 established pursuant to § ~~55-529~~ 55.1-xxx.

3079 **Drafting note: Throughout the section, the term "agency" is replaced with**
3080 **"Common Interest Community Board"; the Common Interest Community Board falls**
3081 **under the purview of the Department of Professional and Occupational Regulation, a state**
3082 **agency, and so the term "agency" was unnecessarily confusing and inaccurate. An**
3083 **additional subdivision, proposed subdivision A 13, is added in subsection A to emphasize**
3084 **that a financial statement or other documentation to demonstrate a declarant's financial**
3085 **ability to complete proposed improvements on a condominium, is required documentation**
3086 **to be included with the application for registration of the condominium. Currently,**
3087 **subdivision A 13 refers to the financial statement in the context of other information that**
3088 **may be required by regulation to be included with the registration application. Technical**
3089 **changes are made.**

3090 § ~~55-79.90~~ 55.1-xxx. Public offering statement; condominium securities.

3091 A. A public offering statement shall disclose fully and accurately the characteristics of
3092 the condominium and the units ~~therein~~ being offered and shall make known to prospective
3093 purchasers all unusual and material circumstances or features affecting the condominium. The
3094 proposed public offering statement submitted to the [agency Common Interest Community Board](#)
3095 shall be in a form prescribed by its ~~rules and~~ regulations and shall include the following:

- 3096 1. The name and principal address of the declarant and the condominium;
- 3097 2. A general narrative description of the condominium stating the total number of units
3098 in the offering; ~~the total number of units planned to be sold and rented;~~ and the total number of

3099 units that may be included in the condominium by reason of future expansion or merger of the
3100 project by the declarant;

3101 3. Copies of the declaration and bylaws, with a brief narrative statement describing each
3102 and including information on declarant control; a projected budget for at least the first year of
3103 the condominium's operation—(, including projected common expense assessments for each
3104 unit); and provisions for reserves for capital expenditures and restraints on alienation;

3105 4. Copies of any management contract, lease of recreational areas, or similar contract or
3106 agreement affecting the use, maintenance, or access of all or any part of the condominium with
3107 a brief narrative statement of the effect of each such agreement upon a purchaser, and a
3108 statement of the relationship, if any, between the declarant and the managing agent or firm;

3109 5. A general description of the status of construction, zoning, site plan approval, issuance
3110 of building permits, or compliance with any other state or local statute or regulation affecting
3111 the condominium;

3112 6. The significant terms of any encumbrances, easements, liens, and matters of title
3113 affecting the condominium;

3114 7. The significant terms of any financing offered by the declarant to the purchaser of
3115 units in the condominium;

3116 8. Provisions of any warranties provided by the declarant on the units and the common
3117 elements, other than the warranty prescribed by subsection B of § ~~55-79.79~~ 55.1-xxx;

3118 9. A statement that, pursuant to subdivision A 2 of § ~~55-79.88~~ 55.1-xxx, the purchaser
3119 may cancel the disposition within five calendar days of delivery of the current public offering
3120 statement or within five calendar days of the contract date of the disposition, whichever is later;

3121 10. A statement of the declarant's obligation to complete improvements of the
3122 condominium—~~which that~~ are planned but not yet begun, or begun but not yet completed. ~~Said~~
3123 Such statement shall include a description of the quality of the materials to be used, the size or
3124 capacity of the improvements when material, and the time by which the improvements shall be

3125 completed. Any limitations on the declarant's obligation to begin or complete any such
3126 improvements shall be expressly stated;

3127 11. If the units in the condominium are being subjected to a time-share instrument
3128 pursuant to § ~~55-367~~ 55.1-xxx, the information required to be disclosed by § ~~55-374~~ 55.1-xxx;

3129 12. A statement listing the facilities or amenities ~~which that~~ are defined as common
3130 elements or limited common elements in the condominium instruments, ~~which that~~ are available
3131 to a purchaser for use. Such statement shall also include whether there are any fees or other
3132 charges for the use of such facilities or amenities ~~which that~~ are not included as part of any
3133 assessment; and the amount of such fees or charges, if any, a purchaser may be required to pay;

3134 13. A statement of any limitation on the number of persons who may occupy a unit as a
3135 dwelling;

3136 14. A statement setting forth any restrictions, limitation, or prohibition on the right of a
3137 unit owner to display the flag of the United States, including, ~~but not limited to~~ reasonable
3138 restrictions as to the size, place, and manner of placement or display of such flag; and

3139 15. Additional information required by the ~~agency~~ Common Interest Community Board
3140 to assure full and fair disclosure to prospective purchasers.

3141 B. The public offering statement shall not be used for any promotional purposes before
3142 registration of the condominium project and shall be used afterwards only if it is used in its
3143 entirety. No person may advertise or represent that the ~~agency~~ Common Interest Community
3144 Board approves or recommends the condominium or disposition ~~thereof of any unit in the~~
3145 condominium. No portion of the public offering statement may be underscored, italicized, or
3146 printed in larger or heavier or different color type than the remainder of the statement unless the
3147 agency Common Interest Community Board requires it.

3148 C. The ~~agency~~ Common Interest Community Board may require the declarant to alter or
3149 amend the proposed public offering statement in order to assure full and fair disclosure to
3150 prospective purchasers, and no change in the substance of the promotional plan or plan of
3151 disposition or development of the condominium may be made after registration without

3152 notifying the ~~agency~~ [Common Interest Community Board](#) and without making appropriate
3153 amendment of the public offering statement. A public offering statement is not current unless all
3154 amendments are incorporated.

3155 D. If an interest in a condominium is currently registered with the [U.S.](#) Securities and
3156 Exchange Commission ~~of the United States~~, a declarant satisfies all requirements relating to the
3157 preparation of a public offering statement in this chapter if he delivers to the purchaser and files
3158 with the ~~agency~~ [Common Interest Community Board](#) a copy of the public offering statement
3159 filed with the Securities and Exchange Commission. An interest in a condominium is not a
3160 security under the provisions of the Securities Act (§ 13.1-501 et seq.).

3161 **Drafting note: Throughout the section, the term "agency" is replaced with**
3162 **"Common Interest Community Board"; the Common Interest Community Board falls**
3163 **under the purview of the Department of Professional and Occupational Regulation, a state**
3164 **agency, and so the term "agency" was unnecessarily confusing and inaccurate. In**
3165 **subsection A, the word "rules" is stricken prior to the word "regulations" because an**
3166 **administrative agency promulgates regulations, not rules. In subdivision A 14, the phrase**
3167 **"but not limited to" is stricken following the word "including" on the basis of § 1-218,**
3168 **which states that throughout the Code "'Includes' means includes, but not limited to."**
3169 **Technical changes are made.**

3170 § ~~55-79.91~~ [55.1-xxx](#). Inquiry and examination.

3171 Upon receipt of an application for registration, the ~~agency~~ [Common Interest Community](#)
3172 [Board](#) shall conduct an examination of the material submitted to determine that:

3173 1. The declarant can convey or cause to be conveyed the units offered for disposition if
3174 the purchaser complies with the terms of the offer;

3175 2. There is reasonable assurance that all proposed improvements will be completed as
3176 represented;

3177 3. The advertising material and the general promotional plan are not false or misleading
3178 and comply with the standards prescribed by the ~~agency~~ Common Interest Community Board in
3179 its regulations and afford full and fair disclosure;

3180 4. The declarant has not, or if a corporation, its officers, and principals have not, been
3181 convicted of a crime involving condominium unit dispositions or any aspect of the land sales
3182 business in ~~this the~~ Commonwealth, United States, or any other state or foreign country within
3183 the past ~~ten~~ 10 years and has not been subject to any injunction or administrative order
3184 restraining a false or misleading promotional plan involving land dispositions; ~~and~~

3185 5. The public offering statement requirements of this chapter have been satisfied; ~~and~~
3186 6. All other requirements of this chapter and the Common Interest Community Board's
3187 regulations have been satisfied.

3188 **Drafting note: Throughout the section, the term "agency" is replaced with**
3189 **"Common Interest Community Board"; the Common Interest Community Board falls**
3190 **under the purview of the Department of Professional and Occupational Regulation, a state**
3191 **agency, and so the term "agency" was unnecessarily confusing and inaccurate. An**
3192 **additional subdivision, proposed subdivision 6, is added to clarify that the Common**
3193 **Interest Community Board is required to determine whether the requirements of the**
3194 **Virginia Condominium Act and the Common Interest Community Board's regulations**
3195 **have been complied with as part of the required examination of material submitted with**
3196 **an application for registration. Technical changes are made.**

3197 § ~~55-79.92~~ 55.1-xxx. Notice of filing and registration.

3198 A. Upon receipt of the application for registration, the ~~agency~~ Common Interest
3199 Community Board shall, ~~within five business days~~, issue a notice of filing to the applicant
3200 within five business days. In the case of receipt of an application for a condominium that is a
3201 conversion condominium, the ~~agency~~ Common Interest Community Board shall, ~~within five~~
3202 ~~business days~~, also issue within five business days a notice of filing to the chief administrative
3203 officer of the county or city in which the proposed condominium is located, ~~which and the~~

3204 notice shall include the name and address of the applicant and the name and address or location
3205 of the proposed condominium. Within ~~sixty~~ 60 days from the date of the notice of filing, the
3206 agency Common Interest Community Board shall enter an order registering the condominium or
3207 rejecting the registration. If no order of rejection is entered within ~~sixty~~ 60 days from the date of
3208 notice of filing, the condominium shall be deemed registered unless the applicant has consented
3209 in writing to a delay.

3210 B. If the agency Common Interest Community Board affirmatively determines, upon
3211 inquiry and examination, that the requirements of ~~§§ 55-79.89 and 55-79.91~~ this chapter and the
3212 Common Interest Community Board's regulations have been met, it shall enter an order
3213 registering the condominium and shall designate the form of the public offering statement.

3214 C. If the agency Common Interest Community Board determines upon inquiry and
3215 examination that any of the requirements of ~~§§ 55-79.89 and 55-79.91~~ this chapter and the
3216 Common Interest Community Board's regulations have not been met, the agency Common
3217 Interest Community Board shall notify the applicant that the application for registration must be
3218 corrected in the particulars specified within ~~twenty~~ 20 days. If the requirements are not met
3219 within the time allowed, the agency Common Interest Community Board shall enter an order
3220 rejecting the registration ~~which, and such order~~ shall include the findings of fact upon which the
3221 order is based. The order rejecting the registration shall not become effective for ~~twenty~~ 20 days
3222 after issuance of the order. During this ~~twenty-day~~ 20-day period, the applicant may petition for
3223 reconsideration and shall be entitled to a hearing ~~or to~~ correct the particulars specified in the
3224 agency's Common Interest Community Board's notice. Such order of rejection shall not take
3225 effect, in any event, until such time as the hearing, once requested, is given to the applicant.

3226 **Drafting note: Throughout the section, the term "agency" is replaced with**
3227 **"Common Interest Community Board"; the Common Interest Community Board falls**
3228 **under the purview of the Department of Professional and Occupational Regulation, a state**
3229 **agency, and so the term "agency" was unnecessarily confusing and inaccurate. In**

3230 subsections B and C, references to the requirements that must be met by an applicant for
3231 registration are updated for clarity and accuracy. Technical changes are made.

3232 § ~~55-79.93~~ 55.1-xxx. Annual report by declarant.

3233 The declarant shall file a report in the form prescribed by the regulations of the ~~agency~~
3234 Common Interest Community Board within 30 days of each anniversary date of the order
3235 registering the condominium. The report shall reflect any material changes in information
3236 contained in the original application for registration.

3237 **Drafting note: The term "agency" is replaced with "Common Interest Community**
3238 **Board"; the Common Interest Community Board falls under the purview of the**
3239 **Department of Professional and Occupational Regulation, a state agency, and so the term**
3240 **"agency" was unnecessarily confusing and inaccurate.**

3241 § ~~55-79.93:1~~ 55.1-xxx. Annual report by unit owners' association.

3242 A. The unit owners' association shall file an annual report in a form and at such time as
3243 prescribed by regulations of the ~~agency~~ Common Interest Community Board. The filing of the
3244 annual report required by this section shall ~~commence~~ begin upon the termination of the
3245 declarant control period pursuant to § ~~55-79.74~~ 55.1-xxx. The annual report shall be
3246 accompanied by a fixed fee in an amount established by the ~~agency~~ Common Interest
3247 Community Board.

3248 B. ~~The agency may accept copies of forms submitted to other state agencies to satisfy~~
3249 ~~the requirements of this section if such forms contain substantially the same information~~
3250 ~~required by the agency.~~

3251 C. The unit owners' association shall also remit to the ~~agency~~ Common Interest
3252 Community Board an annual payment as follows:

3253 1. The lesser of:

3254 a. \$1,000 or such other amount as established by ~~agency~~ Common Interest Community
3255 Board regulation; or

3256 b. Five hundredths of one percent (0.05%) of the ~~unit owners' association's~~ gross
3257 assessment income of the unit owners' association during the preceding year.

3258 2. For the purposes of ~~clause b of subsection C subdivision B 1 b~~, no minimum payment
3259 shall be less than ~~\$10.00~~ \$10.

3260 ~~D.C.~~ The annual payment shall be remitted to the State Treasurer and shall be ~~placed to~~
3261 ~~the credit of~~ credited to the Common Interest Community Management Information Fund
3262 established pursuant to § ~~55-529~~ 55.1-xxx.

3263 **Drafting note: Throughout the section, the term "agency" is replaced with**
3264 **"Common Interest Community Board"; the Common Interest Community Board falls**
3265 **under the purview of the Department of Professional and Occupational Regulation, a state**
3266 **agency, and so the term "agency" was unnecessarily confusing and inaccurate. Existing**
3267 **subsection B is removed as unnecessary; per subsection A, the referenced annual report**
3268 **form is prescribed by the Common Interest Community Board regulations. Technical**
3269 **changes are made.**

3270 § ~~55-79.93:2~~ 55.1-xxx. Termination of registration.

3271 A. In the event that all of the units in the condominium have been disposed of; and that
3272 all periods for conversion or expansion have expired, the ~~agency~~ Common Interest Community
3273 Board shall issue an order terminating the registration of the condominium.

3274 B. Notwithstanding any other provision of this chapter, the ~~agency~~ Common Interest
3275 Community Board may administratively terminate the registration of a condominium if:

3276 1. The declarant has not filed an annual report in accordance with § ~~55-79.93~~ 55.1-xxx
3277 for three or more consecutive years; or

3278 2. The declarant's registration with the State Corporation Commission, if applicable, has
3279 not been active for five or more consecutive years.

3280 **Drafting note: Throughout the section, the term "agency" is replaced with**
3281 **"Common Interest Community Board"; the Common Interest Community Board falls**

3282 under the purview of the Department of Professional and Occupational Regulation, a state
3283 agency, and so the term "agency" was unnecessarily confusing and inaccurate.

3284 § ~~55-79.94~~ 55.1-xxx. Conversion condominiums; special provisions.

3285 A. For the purposes of this section:

3286 "Affordable rent" means a monthly rent that does not exceed the greater of 30 percent of
3287 the annual gross income of the tenant household or 30 percent of the imputed income limit
3288 applicable to such unit size, as published by the Virginia Housing Development Authority for
3289 compliance with the Low Income Housing Tax Credit program.

3290 "Certified nonprofit housing corporation" means a nonprofit organization exempt from
3291 taxation under § 501(c)(3) of the Internal Revenue Code that has been certified by a locality as
3292 actively engaged in producing or preserving affordable housing as determined by criteria
3293 established by the locality.

3294 "Disabled" means a person suffering from a severe, chronic physical or mental
3295 impairment that results in substantial functional imitations.

3296 "Elderly" means a person not less than 62 years of age.

3297 B. Any declarant of a conversion condominium shall include in his public offering
3298 statement in addition to the requirements of § ~~55-79.90~~ 55.1-xxx the following:

3299 1. A specific statement of the amount of any initial or special condominium fee due from
3300 the purchaser on or before settlement of the purchase contract and the basis of such fee;

3301 2. Information on the actual expenditures made on all repairs, maintenance, operation, or
3302 upkeep of the subject building ~~or buildings~~ within the last three years, set forth ~~tabularly in a~~
3303 tabular format with the proposed budget of the condominium; and cumulatively broken down on
3304 a per unit basis in proportion to the relative voting strengths allocated to the units by the bylaws.

3305 If such building ~~or buildings have~~ has not been occupied for a period of three years, then the
3306 information shall be set forth for the maximum period such building ~~or buildings have~~ has been
3307 occupied;

3308 3. A description of any provisions made in the budget for reserves for capital
3309 expenditures and an explanation of the basis for such reserves, or, if no provision is made for
3310 such reserves, a statement to that effect;

3311 4. A statement of the declarant as to the present condition of all structural components
3312 and major utility installations in the condominium, ~~which statement shall include~~ including the
3313 approximate dates of construction, installation, and major repairs, and the expected useful life of
3314 each such item, together with the estimated cost ~~(in current dollars)~~ of replacing each ~~of the~~
3315 same such item;

3316 5. If any building included or that may be included in the condominium was
3317 substantially completed prior to July 1, 1978, a statement that each such building has been
3318 inspected for asbestos in accordance with standards in effect at the time of inspection_; or that an
3319 asbestos inspection will be conducted_; and whether asbestos requiring response actions has
3320 been found_; and _; if found, that response actions have been or will be completed in accordance
3321 with applicable standards prior to the conveyance of any unit in such building. Any asbestos
3322 management program or response action undertaken by the building owner shall comply with
3323 the standards promulgated pursuant to § 2.2-1164.

3324 ~~B. C.~~ B. C. In the case of a conversion condominium, the declarant shall give at the time
3325 specified in subsection ~~C of this section D~~, formal notice to each of the tenants of the building ~~or~~
3326 ~~buildings which that~~ that the declarant has submitted or intends to submit to the provisions of this
3327 chapter. This notice shall advise each tenant of (i) the offering price of the unit he occupies_; (ii)
3328 the projected common expense assessments against that unit for at least the first year of the
3329 condominium's operation_; (iii) any relocation services or assistance, public or private, of which
3330 the declarant is aware_; (iv) any measures taken or to be taken by the declarant to reduce the
3331 incidence of tenant dislocation_; and (v) the details of the relocation plan, if any is provided by
3332 the declarant, to assist tenants in relocating. During the first ~~sixty~~ 60 days after such notice is
3333 mailed or hand delivered, each of the ~~said~~ tenants shall have the exclusive right to purchase the
3334 unit he occupies, but only if such unit is to be retained in the conversion condominium without

3335 substantial alteration in its physical layout. If the conversion condominium is subject to local
3336 ordinances that have been adopted pursuant to subsections ~~F_G~~ and ~~G_H~~, any tenant who is
3337 disabled or elderly may assign the exclusive right to purchase his unit to a ~~government~~
3338 governmental agency, housing authority, or certified nonprofit housing corporation, which shall
3339 then offer the tenant a lease at an affordable rent, following the provisions of subsection ~~F_G~~.
3340 The acquisition of such units by the governmental agency, housing authority, or certified
3341 nonprofit housing corporation shall not (i) exceed the greater of one unit or five percent of the
3342 total number of units in the condominium or (ii) impede the condominium conversion process.
3343 In determining which, if any, units shall be acquired pursuant to this subsection, preference shall
3344 be given to elderly or disabled tenants.

3345 The notice required ~~above in this subsection~~ shall be hand delivered or sent by first-class
3346 mail, return receipt requested, and shall inform the tenants of the conversion to condominium.
3347 Such notice may also constitute the notice to terminate the tenancy as provided for in § ~~55-222~~
3348 55.1-xxx, except that, despite the provisions of § ~~55-222 55.1-xxx~~, a tenancy from ~~month to~~
3349 month month-to-month may only be terminated upon 120 days' notice when such termination is
3350 in regard to the creation of a conversion condominium. If, however, a tenant so notified remains
3351 in possession of the unit he occupies after the expiration of the 120-day period with the
3352 permission of the declarant, in order to then terminate the tenancy, such declarant shall give the
3353 tenant a further notice as provided in § ~~55-222 55.1-xxx~~. Until the expiration of the 120-day
3354 period, the declarant shall have no right of access to the unit except as provided by subsection A
3355 of § ~~55-248.18 55.1-xxx~~ and except that, upon 45 days' written notice to the tenant, the declarant
3356 may enter the unit in order to make additional repairs, decorations, alterations, or improvements,
3357 provided that (i) the making of the same does not constitute an actual or constructive eviction of
3358 the tenant; and (ii) such entry is made either with the consent of the tenant or only at times when
3359 the tenant is absent from the unit. The declarant shall also provide general notice to the tenants
3360 of the condominium or proposed condominium at the time of application to the ~~agency~~
3361 Common Interest Community Board in addition to the formal notice required by this subsection.

3362 ~~C.~~D. The declarant of a conversion condominium shall, in addition to the requirements
3363 of § ~~55-79.89~~ 55.1-xxx, include with the application for registration a copy of the formal notice
3364 set forth in subsection ~~B.~~C and a certified statement that such notice, fully complying with the
3365 provisions of subsection ~~B.~~C, shall be, at the time of the registration of such condominium,
3366 mailed or delivered to each of the tenants in the building ~~or buildings~~ for which registration is
3367 sought. The price and projected common expense assessments for each unit need not be filed
3368 with the ~~agency~~ Common Interest Community Board until such notice is mailed to the tenants.

3369 ~~D.~~E. Notwithstanding the provisions of § ~~55-79.40 of this chapter~~ 55.1-xxx, in the case
3370 of any conversion condominium created under the provisions of the Horizontal Property Act (§
3371 ~~55-79.4~~ 55.1-xxx et seq.) for which a final report has not been issued by the ~~agency~~ Common
3372 Interest Community Board pursuant to § ~~55-79.24~~ 55.1-xxx prior to June 1, 1975, the provisions
3373 of subsections ~~A. and B. of this section~~ and C shall apply and the declarant shall be required to
3374 furnish evidence of full compliance with subsections ~~A. and B.~~ and C prior to the issuance by the
3375 ~~agency~~ Common Interest Community Board of a final report for such conversion condominium.

3376 ~~E.~~F. Any ~~county, city or town~~ locality may require by ordinance that the declarant of a
3377 conversion condominium file with that governing body all information ~~which that~~ is required by
3378 the ~~agency~~ Common Interest Community Board pursuant to § ~~55-79.89~~ 55.1-xxx and a copy of
3379 the formal notice required by subsection ~~B.~~C. Such information shall be filed with that
3380 governing body when the application for registration is filed with the ~~agency~~ Common Interest
3381 Community Board, and such copy of the formal notice shall be filed with that governing body.
3382 There shall be no fees for such filings.

3383 ~~F.~~G. The governing body of any ~~county, city or town~~ locality may enact an ordinance
3384 requiring that elderly or disabled tenants occupying as their residence, at the time of issuance of
3385 the general notice required by subsection ~~B.~~C, apartments or units in a conversion condominium
3386 be offered leases or extensions of leases on the apartments or units they then occupied, or on
3387 other apartments or units of at least equal size and overall quality. The terms and conditions
3388 ~~thereof of such leases or extensions~~ shall be as agreed upon by the lessor and the lessee,

3389 provided that the rent for such apartment or unit shall not be in excess of reasonable rent for
3390 comparable apartments or units in the same market area as such conversion condominium and
3391 such lease shall include or incorporate by reference the bylaws ~~and/or or~~ rules and regulations, if
3392 any, of the association. No such ordinance ~~may shall~~ require that such leases or extensions be
3393 offered on more than ~~twenty~~ 20 percent of the apartments or units in such conversion
3394 condominium, nor ~~may shall~~ any such ordinance require that such leases or extensions extend
3395 beyond three years from the date of such notice. Such leases or extensions shall not be required,
3396 however, in the case of any apartments or units ~~which that~~ will, in the course of the conversion,
3397 be substantially altered in the physical layout, restricted exclusively to nonresidential use, or be
3398 converted in such a manner as to require relocation of the tenant in premises outside of the
3399 project being converted.

3400 ~~For the purposes of this section:~~

3401 ~~"Affordable rent" means a monthly rent that does not exceed the greater of 30 percent of~~
3402 ~~the annual gross income of the tenant household or 30 percent of the imputed income limit~~
3403 ~~applicable to such unit size, as published by the Virginia Housing Development Authority for~~
3404 ~~compliance with the Low Income Housing Tax Credit program.~~

3405 ~~"Certified nonprofit housing corporation" means a nonprofit organization exempt from~~
3406 ~~taxation under § 501(c) (3) of the Internal Revenue Code that has been certified by a locality as~~
3407 ~~actively engaged in producing or preserving affordable housing as determined by criteria~~
3408 ~~established by the locality.~~

3409 ~~"Disabled" means a person suffering from a severe, chronic physical or mental~~
3410 ~~impairment which results in substantial functional limitations.~~

3411 ~~"Elderly" means a person not less than 62 years of age.~~

3412 ~~G. H.~~ The governing body of any county utilizing the optional urban county executive
3413 form of ~~optional~~ government (§§ § 15.2-800 through 15.2-858 et seq.) or the optional county
3414 manager plan of ~~optional~~ government (§§ § 15.2-702 through 15.2-749 et seq.), or of any city or
3415 town adjoining any such county, may require by ordinance that the declarant of any residential

3416 condominium converted from multi-family rental use shall reimburse any tenant displaced by
3417 the conversion for amounts actually expended to relocate as a result of such dislocation. The
3418 reimbursement shall not be required to exceed the amount ~~which that~~ the tenant would have
3419 been entitled to receive under §§ 25.1-407 and 25.1-415 if the real estate comprising the
3420 condominium had been condemned by the Department of Transportation.

3421 **Drafting note: Throughout the section, the term "agency" is replaced with**
3422 **"Common Interest Community Board"; the Common Interest Community Board falls**
3423 **under the purview of the Department of Professional and Occupational Regulation, a state**
3424 **agency, and so the term "agency" was unnecessarily confusing and inaccurate. In**
3425 **subdivision B 2 and subsections C and D, the phrase "or buildings" is stricken after the**
3426 **term "building" on the basis of § 1-227, which states that throughout the Code any word**
3427 **used in the singular includes the plural. The definitions in existing subsection F are**
3428 **relocated to subsection A per current Code style to locate definitions at the beginning of a**
3429 **section. In proposed subsections F and G, the phrase "county, city, and town" is replaced**
3430 **with the term "locality" on the purpose of § 1-221, which states that throughout the Code**
3431 **"'Locality' means a county, city, or town as the context may require." In proposed**
3432 **subsection G, the term "and/or," a grammatical shortcut that is inherently ambiguous, is**
3433 **replaced with the word "or" to reflect its meaning "or" in the sense of either or both/all.**
3434 **In proposed subsection G, "may" is replaced with "shall" because it is used in this section**
3435 **to express an absolute prohibition, which, to be consistent throughout the Code, is more**
3436 **properly expressed by the phrase "No such ordinance shall." Technical changes are made.**

3437 § ~~55-79.95~~ 55.1-xxx. Escrow of deposits.

3438 A. Any deposit made in regard to any disposition of a unit, including a nonbinding
3439 reservation agreement, shall be held in escrow until delivered at settlement. Such escrow funds
3440 shall be deposited in a separate account designated for this purpose ~~which that~~ is federally
3441 insured and located in ~~Virginia;~~ the Commonwealth, except where such deposits are being held
3442 by a real estate broker or attorney licensed under the laws of ~~this the~~ the Commonwealth, such

3443 funds may be placed in that broker's or attorney's regular escrow account and need not be placed
3444 in a separate designated account. Such escrow funds shall not be subject to attachment by the
3445 creditors of either the purchaser or the declarant.

3446 B. In lieu of escrowing deposits as provided in subsection A, the declarant of a
3447 condominium consisting of more than 50 units may:

3448 1. Obtain and maintain a corporate surety bond issued by a surety authorized to do
3449 business in the Commonwealth, in the form and amount set forth below; or

3450 2. Obtain and maintain an irrevocable letter of credit issued by a financial institution
3451 whose accounts are insured by the FDIC, in the form and amount set forth below.

3452 The surety bond or letter of credit shall be maintained until (i) the granting of a deed to
3453 the unit, (ii) the purchaser's default under a purchase contract for the unit entitling the declarant
3454 to retain the deposit, or (iii) the refund of the deposit to the purchaser, whichever occurs first.

3455 C. The surety bond shall be payable to the Commonwealth for the use and benefit of
3456 every person protected under the provisions of this chapter. The declarant shall file the bond
3457 with the Common Interest Community Board. The surety bond may be either in the form of an
3458 individual bond for each deposit accepted by the declarant or, if the total amount of the deposits
3459 accepted by the declarant under this chapter exceeds \$10,000, it may be in the form of a blanket
3460 bond. If the bond is a blanket bond, the amount shall be as follows. If the amount of such
3461 deposits is:

3462 1. \$75,000 or less, the blanket bond shall be \$75,000;

3463 2. More than \$75,000 but less than \$200,000, the blanket bond shall be \$200,000;

3464 3. \$200,000 or more but less than \$500,000, the blanket bond shall be \$500,000;

3465 4. \$500,000 or more but less than \$1 million, the blanket bond shall be \$1 million; and

3466 5. \$1 million or more, the blanket bond shall be 100 percent of the amount of such
3467 deposits.

3468 D. The letter of credit shall be payable to the Commonwealth for use and benefit of
3469 every person protected under this chapter. The declarant shall file the letter of credit with the

3470 Common Interest Community Board. The letter of credit may be either in the form of an
3471 individual letter of credit for each deposit accepted by the declarant or, if the total amount of the
3472 deposits accepted by the declarant under this chapter exceeds \$10,000, it may be in the form of a
3473 blanket letter of credit. If the letter of credit is a blanket letter of credit, the amount shall be as
3474 follows. If the amount of such deposits is:

- 3475 1. \$75,000 or less, the blanket letter of credit shall be \$75,000;
- 3476 2. More than \$75,000 but less than \$200,000, the blanket letter of credit shall be
3477 \$200,000;
- 3478 3. \$200,000 or more but less than \$500,000, the blanket letter of credit shall be
3479 \$500,000;
- 3480 4. \$500,000 or more but less than \$1 million, the blanket letter of credit shall be \$1
3481 million; and
- 3482 5. \$1 million or more, the blanket letter of credit shall be 100 percent of the amount of
3483 such deposits.

3484 For the purposes of determining the amount of any blanket letter of credit that a
3485 declarant maintains in any calendar year, the total amount of deposits considered held by the
3486 declarant shall be determined as of May 31 in each calendar year and the amount of the letter of
3487 credit shall be in accordance with the amount of deposits held as of May 31.

3488 **Drafting note: Technical changes.**

3489 § ~~55-79.96~~ 55.1-xxx. Declarant to deliver declaration, ~~etc.~~, to purchaser.

3490 The declarant shall within ~~ten~~ 10 days of recordation of the condominium instruments as
3491 provided for in §§ ~~55-79.45~~ 55.1-xxx and ~~55-79.49~~ hereof, 55.1-xxx forward to each purchaser
3492 at his last known address by first-class mail, return receipt requested, an exact copy of the
3493 recorded declaration and bylaws.

3494 **Drafting note: Technical changes.**

3495 § ~~55-79.99~~ 55.1-xxx. Investigations and proceedings.

3496 A. Whenever the ~~agency~~ Common Interest Community Board receives a written
3497 complaint ~~which that~~ appears to state a valid claim, the ~~agency~~ Common Interest Community
3498 Board shall make necessary public or private investigations in accordance with law within or
3499 outside of ~~this the~~ Commonwealth to determine whether any declarant, ~~or~~ its agents, employees,
3500 or other representatives have violated or are about to violate this chapter or any ~~rule~~ Common
3501 Interest Community Board regulation or order ~~hereunder~~, or to aid in the enforcement of this
3502 chapter or in the prescribing of ~~rules,~~ Common Interest Community Board regulations and
3503 forms ~~hereunder~~. The ~~agency~~ Common Interest Community Board may also in like manner and
3504 with like authority investigate written complaints against persons other than the declarant, ~~or~~ its
3505 agents, employees, or other representatives.

3506 B. For the purpose of any investigation or proceeding under this chapter, the ~~agency~~
3507 Common Interest Community Board or any officer designated by ~~rule~~ regulation may
3508 administer oaths or affirmations, and upon its own motion or upon request of any party shall
3509 subpoena witnesses, compel their attendance, take evidence, and require the production of any
3510 matter ~~which that~~ is relevant to the investigation, including the existence, description, nature,
3511 custody, condition, and location of any books, documents, or other tangible things and the
3512 identity and location of persons having knowledge of relevant facts or any other matter
3513 reasonably calculated to lead to the discovery of material evidence.

3514 C. Upon failure to obey a subpoena or to answer questions propounded by the
3515 investigating officer and upon reasonable notice to all persons affected ~~thereby by such failure,~~
3516 the ~~agency~~ Common Interest Community Board may apply to the Circuit Court of the ~~City~~
3517 County of ~~Richmond Henrico~~ for an order compelling compliance.

3518 **Drafting note: Throughout the section, the term "agency" is replaced with**
3519 **"Common Interest Community Board"; the Common Interest Community Board falls**
3520 **under the purview of the Department of Professional and Occupational Regulation, a state**
3521 **agency, and so the term "agency" was unnecessarily confusing and inaccurate. In**
3522 **subsection A, the word "rule" is replaced with "regulation" because an administrative**

3523 agency promulgates regulations, not rules. Similarly, in subsection A, the word "rules" is
3524 stricken prior to the word "regulation" because an administrative agency promulgates
3525 regulations, not rules. In subsection B, the word "rule" is replaced with "regulation"
3526 because an administrative agency promulgates regulations, not rules. In subsection C,
3527 reference to the Circuit Court of the City of Richmond is changed to the Circuit Court of
3528 the County of Henrico; the Common Interest Community Board is under the purview of
3529 the Department of Professional and Occupational Regulation, which has relocated from
3530 the City of Richmond to the County of Henrico, so venue is proper in the County of
3531 Henrico. Technical changes are made.

3532 § ~~55-79.100~~ 55.1-xxx. Cease and desist orders.

3533 ~~(a) If the agency~~ A. The Common Interest Community Board may issue an order
3534 requiring a person to cease and desist from any of the unlawful practices enumerated in
3535 subdivisions 1 through 5 and to take such affirmative action as in the judgment of the Common
3536 Interest Community Board will carry out the purposes of this chapter if the Common Interest
3537 Community Board determines after notice and hearing that ~~a such~~ person has:

3538 ~~(1)~~ 1. Violated any provision of this chapter;

3539 ~~(2)~~ 2. Directly or through an agent or employee knowingly engaged in any false,
3540 deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of a unit;

3541 ~~(3)~~ 3. Made any substantial change in the plan of disposition and development of the
3542 condominium subsequent to the order of registration without notifying the ~~agency~~ Common
3543 Interest Community Board;

3544 ~~(4)~~ 4. Disposed of any units ~~which that~~ have not been registered with the ~~agency~~
3545 Common Interest Community Board; or

3546 ~~(5)~~ 5. Violated any lawful order or ~~rule~~ regulation of the ~~agency~~; ~~it may issue an order~~
3547 ~~requiring the person to cease and desist from the unlawful practice and to take such affirmative~~
3548 ~~action as in the judgment of the agency will carry out the purposes of this chapter~~ Common
3549 Interest Community Board.

3550 ~~(b)~~ B. If the ~~agency~~ Common Interest Community Board makes a finding of fact in
3551 writing that the public interest will be irreparably harmed by delay in issuing an order, it may
3552 issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order,
3553 the ~~agency~~ Common Interest Community Board shall give notice of the proposal to issue a
3554 temporary cease and desist order to the person. Every temporary cease and desist order shall
3555 include in its terms a provision that upon request a hearing will be held promptly to determine
3556 whether ~~or not~~ it becomes permanent.

3557 **Drafting note: Throughout the section, the term "agency" is replaced with**
3558 **"Common Interest Community Board"; the Common Interest Community Board falls**
3559 **under the purview of the Department of the Professional and Occupational Regulation, a**
3560 **state agency, and so the term "agency" was unnecessarily confusing and inaccurate. The**
3561 **language at the end of subsection A is relocated to the beginning of the subsection. In**
3562 **subdivision A 5, the word "rule" is replaced with "regulation" because an administrative**
3563 **agency promulgates regulations, not rules. Technical changes are made.**

3564 § ~~55-79.101~~ 55.1-xxx. Revocation of registration.

3565 ~~(a)~~ A. A registration may be revoked by the Common Interest Community Board after
3566 notice and hearing upon a written finding of fact in accordance with the Administrative Process
3567 Act (§ 2.2-4000 et seq.), which shall be accompanied by a concise and explicit statement of the
3568 underlying facts supporting the finding, that the declarant has:

3569 ~~(1)~~ 1. Failed to comply with the terms of a cease and desist order;

3570 ~~(2)~~ 2. Been convicted in any court subsequent to the filing of the application for
3571 registration for a crime involving fraud, deception, false pretenses, misrepresentation, false
3572 advertising, or dishonest dealing in real estate transactions;

3573 ~~(3)~~ 3. Disposed of, concealed, or diverted any funds or assets of any person so as to
3574 defeat the rights of unit purchasers;

3575 ~~(4)~~ 4. Failed faithfully to perform any stipulation or agreement made with the ~~agency~~
3576 Common Interest Community Board as an inducement to grant any registration, to reinstate any
3577 registration, or to approve any promotional plan or public offering statement; or

3578 ~~(5)~~ 5. Made intentional misrepresentations or concealed material facts in an application
3579 for registration.

3580 ~~Findings of fact, if set forth in statutory language, shall be accompanied by concise and~~
3581 ~~explicit statement of the underlying facts supporting the findings.~~

3582 ~~(b)~~ B. If the ~~agency~~ Common Interest Community Board finds after notice and a hearing
3583 that the developer has been guilty of a violation for which revocation could be ordered, it may
3584 issue a cease and desist order instead.

3585 **Drafting note: Throughout the section, the term "agency" is replaced with**
3586 **"Common Interest Community Board"; the Common Interest Community Board falls**
3587 **under the purview of the Department of the Professional and Occupational Regulation, a**
3588 **state agency, and so the term "agency" was unnecessarily confusing and inaccurate. In**
3589 **subsection A, reference to the Common Interest Community Board is added to clarify**
3590 **what body has the authority to revoke a registration. In subsection A, reference to the**
3591 **Administrative Process Act is added to clarify that a notice and hearing on the revocation**
3592 **of a registration is required to comply with such Act. The language at the end of**
3593 **subsection A is relocated to the beginning of the subsection. Technical changes are made.**

3594 ~~§ 55-79.102~~ 55.1-xxx. Judicial review.

3595 Proceedings for judicial review shall be in accordance with the provisions of the
3596 Administrative Process Act (§ 2.2-4000 et seq.).

3597 **Drafting note: No change.**

3598 ~~§ 55-79.103~~ 55.1-xxx. Penalties.

3599 Any person who willfully violates any provision of ~~§§ 55-79.87, § 55.1-xxx, 55-79.88~~
3600 ~~55.1-xxx, 55-79.89, 55.1-xxx, 55-79.90, 55.1-xxx, 55-79.93, 55.1-xxx, 55-79.94, 55.1-xxx, 55-~~
3601 ~~79.95, or 55.1-xxx~~ or any rule regulation adopted under or order issued pursuant to § ~~55-79.98~~

3602 [55.1-xxx](#), or any person who willfully in an application for registration makes any untrue
3603 statement of a material fact or omits to state a material fact ~~shall be~~ is guilty of a misdemeanor
3604 and may be fined not less than \$1,000 or double the amount of gain from the transaction,
3605 whichever is the larger, but not more than \$50,000; or he may be imprisoned for not more than
3606 6 six months; or both, for each offense.

3607 **Drafting note: The word "rule" is replaced with "regulation" because the Common**
3608 **Interest Community Board, an administrative agency whose powers and duties are**
3609 **contained in existing § 55-79.98 referenced in this section, promulgates regulations, not**
3610 **rules.**

3611

[Article 5.](#)

3612

[Disclosure Requirements; Authorized Fees.](#)

3613 **Drafting note: Proposed Article 5 contains existing §§ 55-79.97 through 55-79.97:3,**
3614 **which contain provisions related to the resale disclosure requirement for condominiums.**
3615 **This proposed article is consistent with the organization of the Property Owners'**
3616 **Association Act (§ 55.1-xxx et seq.), which has a stand-alone article (Article 2) for resale**
3617 **disclosure provisions. Existing § 55-79.97 is proposed to be divided into five sections both**
3618 **for clarity and to mirror the corresponding sections in the Property Owners' Association**
3619 **Act.**

3620

[§ 55-79.97 55.1-xxx](#). Resale by purchaser; [contract disclosure; right of cancellation](#).

3621

A. [For purposes of this article:](#)

3622

["Delivery" means that the resale certificate is delivered to the purchaser or purchaser's](#)

3623

[authorized agent by one of the methods specified in this article.](#)

3624

["Financial update" means an update of the financial information referenced in](#)

3625

[subdivisions A 2 through 7 of § 55.1-xxx \[contents of resale certificate; delivery\].](#)

3626

["Purchaser's authorized agent" means any person designated by such purchaser in a](#)

3627

[ratified real estate contract for purchase and sale of residential real property or other writing](#)

3628

[designating such agent.](#)

3629 "Receives, received, or receiving" the resale certificate means that the purchaser or
3630 purchaser's authorized agent has received the resale certificate by one of the methods specified
3631 in this article.

3632 "Resale certificate update" means an update of the financial information referenced in
3633 subdivisions A 2 through 9 and 12 of § 55.1-xxx [contents of resale certificate; delivery]. The
3634 update shall include a copy of the original resale certificate.

3635 "Seller's authorized agent" means a person designated by such seller in a ratified real
3636 estate contract for purchase and sale of residential real property or other writing designating
3637 such agent.

3638 B. In the event of any resale of a condominium unit by a unit owner other than the
3639 declarant, and subject to the provisions of subsection F and subsection A of § ~~55-79.87 A~~ 55.1-
3640 xxx, the unit owner shall disclose in the contract that (i) the unit is located within a development
3641 which that is subject to the Condominium Act; (ii) the Condominium Act requires the seller to
3642 obtain from the unit owners' association a resale certificate and provide it to the purchaser; (iii)
3643 the purchaser may cancel the contract within three days after receiving the resale certificate or
3644 being notified that the resale certificate will not be available; (iv) if the purchaser has received
3645 the resale certificate, the purchaser has a right to request a resale certificate update or financial
3646 update in accordance with § ~~55-79.97:1~~ 55.1-xxx, as appropriate; and (v) the right to receive the
3647 resale certificate and the right to cancel the contract are waived conclusively if not exercised
3648 before settlement.

3649 For purposes of clause (iii), the resale certificate shall be deemed not to be available if
3650 (a) a current annual report has not been filed by the unit owners' association with either the State
3651 Corporation Commission pursuant to § 13.1-936 or the Common Interest Community Board
3652 pursuant to § ~~55-79.93:1~~ 55.1-xxx, (b) the seller has made a written request to the unit owners'
3653 association that the resale certificate be provided and no such resale certificate has been
3654 received within 14 days in accordance with subsection C of § 55.1-xxx [Contents of resale

3655 [certificate; delivery](#)], or (c) written notice has been provided by the unit owners' association that
3656 a resale certificate is not available.

3657 ~~B. C.~~ If the contract does not contain the disclosure required by subsection ~~A. B.~~, the
3658 purchaser's sole remedy is to cancel the contract prior to settlement.

3659 ~~C. D.~~ The information contained in the resale certificate shall be current as of a date
3660 specified on the resale certificate. A resale certificate update or a financial update may be
3661 requested as provided in § ~~55-79.97:1~~ [55.1-xxx](#), as appropriate. The purchaser may cancel the
3662 contract (i) within three days after the date of the contract, if the purchaser receives the resale
3663 certificate or is notified that the resale certificate will not be available on or before the date that
3664 the purchaser signs the contract; (ii) within three days after receiving the resale certificate if the
3665 resale certificate or notice that the resale certificate will not be available is hand delivered,
3666 delivered by electronic means, or delivered by a commercial overnight delivery service or the
3667 United States Postal Service, and a receipt [is](#) obtained; or (iii) within six days after the postmark
3668 date if the resale certificate or notice that the resale certificate will not be available is sent to the
3669 purchaser by United States mail. The purchaser may also cancel the contract at any time prior to
3670 settlement if the purchaser has not been notified that the resale certificate will not be available
3671 and the resale certificate is not delivered to the purchaser.

3672 Notice of cancellation shall be provided to the unit owner or his agent by one of the
3673 following methods:

3674 ~~a. 1.~~ Hand delivery;

3675 ~~b. 2.~~ United States mail, postage prepaid, provided [that](#) the sender retains sufficient proof
3676 of mailing, ~~which may be either a United States postal certificate of mailing or in the form of~~ a
3677 certificate of service prepared by the sender confirming such mailing;

3678 ~~c. 3.~~ Electronic means, provided [that](#) the sender retains sufficient proof of the electronic
3679 delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent
3680 by facsimile, or a certificate of service prepared by the sender confirming the electronic
3681 delivery; or

3682 ~~d.4.~~ Overnight delivery using a commercial service or the United States Postal Service.

3683 In the event of a dispute, the sender shall have the burden to demonstrate delivery of the
3684 notice of cancellation. Such cancellation shall be without penalty, and the unit owner shall cause
3685 any deposit to be returned promptly to the purchaser.

3686 § 55.1-xxx. Contents of resale certificate; delivery.

3687 A. A resale certificate shall include the following:

3688 1. An appropriate statement pursuant to subsection H of § ~~55-79.84~~ 55.1-xxx, which
3689 need not be notarized, and, if applicable, an appropriate statement pursuant to § ~~55-79.85~~ 55.1-
3690 xxx;

3691 2. A statement of any expenditure of funds approved by the unit owners' association or
3692 the executive ~~organ which shall require board that requires~~ an assessment in addition to the
3693 regular assessment during the current or the immediately succeeding fiscal year;

3694 3. A statement, including the amount, of all assessments and any other fees or charges
3695 currently imposed by the unit owners' association, together with any known post-closing fee
3696 charged by the common interest community manager, if any, and associated with the purchase,
3697 disposition, and maintenance of the condominium unit and the use of the common elements, and
3698 the status of the account;

3699 4. A statement of whether there is any other entity or facility to which the unit owner
3700 may be liable for fees or other charges;

3701 5. The current reserve study report or a summary ~~thereof, of such report and~~ a statement
3702 of the status and amount of any reserve or replacement fund and any portion of the fund
3703 designated for any specified project by the executive ~~organ~~ board;

3704 6. A copy of the unit owners' association's current budget or a summary ~~thereof of such~~
3705 budget prepared by the unit owners' association and a copy of the statement of its financial
3706 position (balance sheet) for the last fiscal year for which a statement is available, including a
3707 statement of the balance due of any outstanding loans of the unit owners' association;

3708 7. A statement of the nature and status of any pending suits or unpaid judgments to
3709 which the unit owners' association is a party ~~which that~~ either could or would have a material
3710 impact on the unit owners' association or the unit owners or ~~which that~~ relates to the unit being
3711 purchased;

3712 8. A statement setting forth what insurance coverage is provided for all unit owners by
3713 the unit owners' association, including the fidelity bond maintained by the unit owners'
3714 association, and what additional insurance coverage would normally be secured by each
3715 individual unit owner;

3716 9. A statement that any improvements or alterations made to the unit, or the limited
3717 common elements assigned thereto, are or are not in violation of the condominium instruments;

3718 10. A copy of the current bylaws, rules and regulations, and architectural guidelines
3719 adopted by the unit owners' association and the amendments ~~thereto to any such documents~~;

3720 11. A statement of whether any portion of the condominium ~~or any portion thereof~~ is
3721 located within a development subject to the Property Owners' Association Act (§ ~~55-508~~ 55.1-
3722 xxx et seq.) ~~of Chapter 26 of this title~~;

3723 12. A copy of the notice given to the unit owner by the unit owners' association of any
3724 current or pending rule or architectural violation;

3725 13. A copy of any approved minutes of the executive ~~organ~~ board and unit owners'
3726 association meetings for the six calendar months preceding the request for the resale certificate;

3727 14. Certification that the unit owners' association has filed with the Common Interest
3728 Community Board the annual report required by § ~~55-79.93:1~~; ~~which certification shall indicate~~
3729 55.1-xxx, the filing number assigned by the Common Interest Community Board, and the
3730 expiration date of such filing;

3731 15. A statement of any limitation on the number of persons who may occupy a unit as a
3732 dwelling;

3733 16. A statement setting forth any restrictions, limitation, or prohibition on the right of a
3734 unit owner to display the flag of the United States, including, ~~but not limited to~~ reasonable
3735 restrictions as to the size, time, place, and manner of placement or display of such flag;

3736 17. A statement setting forth any restriction, limitation, or prohibition on the right of a
3737 unit owner to install or use solar energy collection devices on the unit owner's property; and

3738 18. A statement indicating any known project approvals currently in effect issued by
3739 secondary mortgage market agencies.

3740 B. Failure to receive a resale certificate shall not excuse any failure to comply with the
3741 provisions of the condominium instruments, articles of incorporation, or rules or regulations.

3742 C. The resale certificate shall be delivered in accordance with the written request and
3743 instructions of the seller or the seller's authorized agent, including whether the resale certificate
3744 shall be delivered electronically or in hard copy, at the option of the seller or the seller's
3745 authorized agent, and shall specify the complete contact information for the parties to whom the
3746 resale certificate shall be delivered. The resale certificate shall be delivered within 14 days of
3747 receipt of such request. The resale certificate shall not, in and of itself, be deemed a security
3748 within the meaning of § 13.1-501.

3749 D. The seller or the seller's authorized agent may request that the resale certificate be
3750 provided in hard copy or in electronic form. A unit owners' association or common interest
3751 community manager may provide the resale certificate electronically; however, the seller or the
3752 seller's authorized agent shall have the right to request that the resale certificate be provided in
3753 hard copy. The seller or the seller's authorized agent shall continue to have the right to request a
3754 hard copy of the resale certificate in person at the principal place of business of the unit owners'
3755 association. If the seller or the seller's authorized agent requests that the resale certificate be
3756 provided in electronic format, neither the unit owners' association nor its common interest
3757 community manager may require the seller or the seller's authorized agent to pay any fees to use
3758 the provider's electronic network or system. The resale certificate shall not be delivered in hard
3759 copy if the requester has requested delivery of such resale certificate electronically. If the resale

3760 certificate is provided electronically by a website link, the preparer shall not cause the website
3761 link to expire within the subsequent 90-day period. The preparer shall not charge another fee
3762 during the subsequent 12-month period, except that the preparer may charge an update fee for a
3763 financial update or for an inspection as provided in § ~~55-79.97:1~~ 55.1-xxx. If the seller or the
3764 seller's authorized agent asks that the resale certificate be provided in electronic format, the
3765 seller or the seller's authorized agent may request that an electronic copy be provided to each of
3766 the following named in the request: the seller, the seller's authorized agent, the purchaser, the
3767 purchaser's authorized agent, and not more than one other person designated by the requester. If
3768 so requested, the unit owners' association or its common interest community manager may
3769 require the seller or the seller's authorized agent to pay the fee specified in § ~~55-79.97:1~~ 55.1-
3770 xxx. Regardless of whether the resale certificate is delivered in paper form or electronically, the
3771 preparer of the resale certificate shall provide such resale certificate directly to the persons
3772 designated by the requester to the addresses or, if applicable, the email addresses provided by
3773 the requester.

3774 E. Subject to the provisions of § ~~55-79.87~~ 55.1-xxx, but notwithstanding any other
3775 provisions of this chapter, the provisions and requirements of this section shall apply to any
3776 such resale of a condominium unit created under the provisions of the Horizontal Property Act
3777 (§ ~~55-79:1~~ 55.1-xxx et seq.).

3778 ~~F. The resale certificate required by this section need not be provided in the case of:~~

3779 ~~1. A disposition of a unit by gift;~~

3780 ~~2. A disposition of a unit pursuant to court order if the court so directs;~~

3781 ~~3. A disposition of a unit by foreclosure or deed in lieu of foreclosure; or~~

3782 ~~4. A disposition of a unit by a sale at auction, when the resale certificate was made~~
3783 ~~available as part of the auction package for prospective purchasers prior to the auction.~~

3784 ~~G. In any transaction in which a resale certificate is required and a trustee acts as the~~
3785 ~~seller in the sale or resale of a unit, the trustee shall obtain the resale certificate from the unit~~
3786 ~~owners' association and provide the resale certificate to the purchaser.~~

3787 ~~H. For purposes of this chapter:~~

3788 ~~"Delivery" means that the resale certificate is delivered to the purchaser or purchaser's~~
3789 ~~authorized agent by one of the methods specified in this section.~~

3790 ~~"Purchaser's authorized agent" means any person designated by such purchaser in a~~
3791 ~~ratified real estate contract for purchase and sale of residential real property or other writing~~
3792 ~~designating such agent.~~

3793 ~~"Receives, received, or receiving" the resale certificate means that the purchaser or~~
3794 ~~purchaser's authorized agent has received the resale certificate by one of the methods specified~~
3795 ~~in this section.~~

3796 ~~"Seller's authorized agent" means a person designated by such seller in a ratified real~~
3797 ~~estate contract for purchase and sale of residential real property or other writing designating~~
3798 ~~such agent.~~

3799 ~~I. F.~~ Unless otherwise provided in the ratified real estate contract or other writing,
3800 delivery to the purchaser's authorized agent shall require delivery to such agent and not to a
3801 person other than such agent. Delivery of the resale certificate may be made by the unit owner
3802 or the seller's authorized agent.

3803 ~~J. G.~~ If the unit is governed by more than one association, the purchaser's right of
3804 cancellation may be exercised within the required time frames following delivery of the last
3805 resale certificate or disclosure packet.

3806 ~~K. Except as expressly authorized in this chapter or in the condominium instruments or~~
3807 ~~as otherwise provided by law, no unit owners' association shall:~~

3808 ~~1. Require the use of any for sale sign that is (i) a unit owners' association sign or (ii) a~~
3809 ~~real estate sign that does not comply with the requirements of the Virginia Real Estate Board. A~~
3810 ~~unit owners' association may, however, prohibit the placement of signs in the common elements~~
3811 ~~and establish reasonable rules and regulations that regulate (a) the number of real estate signs to~~
3812 ~~be located on real property upon which the owner has a separate ownership interest or a right of~~
3813 ~~exclusive possession, so long as at least one real estate sign is permitted; (b) the geographical~~

3814 ~~location of real estate signs on real property in which the owner has a separate ownership~~
3815 ~~interest or a right of exclusive possession, so long as the location of the real estate signs~~
3816 ~~complies with the requirements of the Virginia Real Estate Board; (c) the manner in which real~~
3817 ~~estate signs are affixed to real property; and (d) the period of time after settlement when the real~~
3818 ~~estate signs on such real property shall be removed; or~~

3819 ~~2. Require any unit owner to execute a formal power of attorney if the unit owner~~
3820 ~~designates a person licensed under the provisions of § 54.1-2106.1 as the unit owner's~~
3821 ~~authorized representative, and the unit owners' association shall recognize such representation~~
3822 ~~without a formal power of attorney, provided that the unit owners' association is given a written~~
3823 ~~authorization signed by the unit owner designating such representative. Notwithstanding the~~
3824 ~~foregoing, the requirements of § 55-79.77 and the condominium instruments shall be satisfied~~
3825 ~~before any such representative may exercise a vote on behalf of a unit owner as a proxy.~~

3826 **Drafting note: Existing § 55-79.97 is proposed to be divided into five sections. First,**
3827 **proposed § 55.1-xxx [Resale by purchaser; contract disclosure; right of cancellation]**
3828 **contains provisions from existing subsections A, B, part of C, and H. Additionally, the**
3829 **definitions of "financial update" and "resale certificate update" are relocated from**
3830 **existing § 55-79.41 to proposed subsection A of § 55.1-xxx [Resale by purchaser; contract**
3831 **disclosure; right of cancellation] because they are terms used in relation to resale**
3832 **disclosures. In proposed subdivision D 2 of § 55.1-xxx [Resale by purchaser; contract**
3833 **disclosure; right of cancellation], the reference to a U.S. postal certificate of mailing is**
3834 **stricken because that type of certificate is no longer used.**

3835 **Second, proposed § 55.1-xxx [Contents of resale certificate; delivery] contains part**
3836 **of existing subsection C and subsections D, E, I, and J of existing § 55-79.97. In**
3837 **subdivisions A 2, 5, and 13, the term "executive organ" is changed to "executive board"**
3838 **for consistency with the term as it is defined in § 55.1-xxx [§ 55-79.41]. In subdivision A 16,**
3839 **the phrase "but not limited to" is stricken following the word "including" on the basis of §**

3840 1-218, which states that throughout the Code "'Includes' means includes, but not limited
3841 to."

3842 Third, existing subsection F and G of § 55-79.97 are relocated to proposed § 55.1-
3843 xxx [Exceptions to disclosure requirements].

3844 Fourth and fifth, existing subsection K is relocated as proposed §§ 55.1-xxx and
3845 55.1-xxx [for sale signs and authorized representatives; before § 55-79.81].

3846 Technical changes are made.

3847 § ~~55-79.97:1~~ 55.1-xxx. Fees for resale certificate.

3848 A. The unit owners' association may charge fees as authorized by this section for the
3849 inspection of the property, for the preparation and issuance of the resale certificate required by §
3850 ~~55-79.97~~ 55.1-xxx, and for such other services as are set out in this section. Nothing in this
3851 chapter shall be construed to authorize the unit owners' association or common interest
3852 community manager to charge an inspection fee for a unit except as provided in this section.

3853 B. A reasonable fee may be charged by the preparer of the resale certificate as follows
3854 ~~for~~:

3855 1. ~~The For the~~ inspection of the unit, as authorized in the declaration and as required to
3856 prepare the resale certificate, a fee not to exceed \$100;

3857 2. ~~The For~~ preparation and delivery of the resale certificate in (i) paper format, a fee not
3858 to exceed \$150 for no more than two hard copies; or (ii) electronic format, a fee not to exceed a
3859 total of \$125, for an electronic copy to each of the following named in the request: the seller, the
3860 seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one
3861 other person designated by the requester. Only one fee shall be charged for the preparation and
3862 delivery of the resale certificate;

3863 3. At the option of the seller or the seller's authorized agent, with the consent of the unit
3864 owners' association or the common interest community manager, for expediting the inspection,
3865 preparation, and delivery of the resale certificate, an additional expedite fee not to exceed \$50;

3866 4. At the option of the seller or the seller's authorized agent, for an additional hard copy
3867 of the resale certificate, a fee not to exceed \$25 per hard copy;

3868 5. At the option of the seller or the seller's authorized agent, for hand delivery or
3869 overnight delivery of the resale certificate, a fee not to exceed an amount equal to the actual cost
3870 paid to a third-party commercial delivery service ~~for hand delivery or overnight delivery of the~~
3871 ~~resale certificate~~; and

3872 6. A post-closing fee to the purchaser of the unit, collected at settlement, for the purpose
3873 of establishing the purchaser as the owner of the unit in the records of the unit owners'
3874 association, a fee not to exceed \$50.

3875 Neither the unit owners' association nor its common interest community manager shall
3876 require cash, check, certified funds, or credit card payments at the time the request for the resale
3877 certificate is made. The resale certificate shall state that all fees and costs for the resale
3878 certificate shall be the personal obligation of the unit owner and shall be an assessment against
3879 the unit and collectible as any other assessment in accordance with the provisions of the
3880 condominium instruments and § ~~55-79.83~~ 55.1-xxx, if not paid at settlement or within 60 days
3881 of the delivery of the resale certificate, whichever occurs first.

3882 For purposes of this section, an expedite fee shall ~~only~~ be charged only if the inspection
3883 and preparation of delivery of the resale certificate are completed within five business days of
3884 the request for a resale certificate.

3885 C. No fees other than those specified in this section, and as limited by this section, shall
3886 be charged by the unit owners' association or its common interest community manager for
3887 compliance with the duties and responsibilities of the unit owners' association under this section.
3888 No additional fee shall be charged for access to the unit owners' association's or common
3889 interest community manager's website. The unit owners' association or its common interest
3890 community manager shall publish and make available in paper or electronic format, or both, a
3891 schedule of the applicable fees so that the seller or the seller's authorized agent will know such
3892 fees at the time of requesting the resale certificate.

3893 D. Any fees charged pursuant to this section shall be collected at the time settlement
3894 occurs on the sale of the unit and shall be due and payable out of the settlement proceeds in
3895 accordance with this section. The seller shall be responsible for all costs associated with the
3896 preparation and delivery of the resale certificate, except for the costs of any resale certificate
3897 update or financial update, which costs shall be the responsibility of the requester, payable at
3898 settlement. The settlement agent shall escrow a sum sufficient to pay such costs at settlement.
3899 Neither the unit owners' association nor its common interest community manager shall require
3900 cash, check, certified funds, or credit card payments at the time the request is made for the
3901 resale certificate.

3902 E. If settlement does not occur within 60 days of the delivery of the resale certificate, or
3903 funds are not collected at settlement and disbursed to the unit owners' association or the
3904 common interest community manager, all fees, including those costs that would have otherwise
3905 been the responsibility of the purchaser or settlement agent, shall be (i) assessed within one year
3906 after delivery of the resale certificate against the unit owner, (ii) the personal obligation of the
3907 unit owner, and (iii) an assessment against the unit and collectible as any other assessment in
3908 accordance with the provisions of the condominium instruments and ~~§ 55-79.83~~ [55.1-xxx](#). The
3909 seller may pay the unit owners' association by cash, check, certified funds, or credit card, if
3910 credit card payment is an option offered by the unit owners' association. The unit owners'
3911 association shall pay the common interest community manager the amount due from the unit
3912 owner within 30 days after invoice.

3913 F. The maximum allowable fees charged in accordance with this section shall adjust
3914 every five years, as of January 1 of that year, in an amount equal to the annual increases for that
3915 five-year period in the United States Average Consumer Price Index for all items, all urban
3916 consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of
3917 Labor.

3918 G. If a resale certificate has been issued within the preceding 12-month period, a person
3919 specified in the written instructions of the seller or the seller's authorized agent, including the

3920 seller or the seller's authorized agent or the purchaser or the purchaser's authorized agent, may
3921 request a resale certificate update. The requester shall specify whether the resale certificate
3922 update shall be delivered electronically or in hard copy and shall specify the complete contact
3923 information of the parties to whom the update shall be delivered. The resale certificate update
3924 shall be delivered within 10 days of the written request.

3925 H. The settlement agent may request a financial update. The requester shall specify
3926 whether the financial update shall be delivered electronically or in hard copy and shall specify
3927 the complete contact information of the parties to whom the update shall be delivered. The
3928 financial update shall be delivered within three business days of the written request.

3929 I. A reasonable fee for the resale certificate update or financial update may be charged
3930 by the preparer, not to exceed \$50. At the option of the purchaser or the purchaser's authorized
3931 agent, the requester may request that the unit owners' association or the common interest
3932 community manager perform an additional inspection of the unit, as authorized in the
3933 declaration, for a fee not to exceed \$100. Any fees charged for the specified update shall be
3934 collected at the time settlement occurs on the sale of the property. The settlement agent shall
3935 escrow a sum sufficient to pay such costs at settlement. Neither the unit owners' association nor
3936 its common interest community manager, if any, shall require cash, check, certified funds, or
3937 credit card payments at the time the request is made for the resale certificate update. The
3938 requester may request that the specified update be provided in hard copy or in electronic form.

3939 J. No unit owners' association or common interest community manager may require the
3940 requester to request the specified update electronically. The seller or the seller's authorized agent
3941 shall continue to have the right to request a hard copy of the specified update in person at the
3942 principal place of business of the unit owners' association. If the requester asks that the specified
3943 update be provided in electronic format, neither the unit owners' association nor its common
3944 interest community manager may require the requester to pay any fees to use the provider's
3945 electronic network or system. A copy of the specified update shall be provided to the seller or
3946 the seller's authorized agent.

3947 K. When a resale certificate has been delivered as required by § ~~55-79.97~~ 55.1-xxx, the
3948 unit owners' association shall, as to the purchaser, be bound by the statements set forth ~~therein in~~
3949 the certificate as to the status of the assessment account and the status of the unit with respect to
3950 any violation of the condominium instruments as of the date of the statement unless the
3951 purchaser had actual knowledge that the contents of the resale certificate were in error.

3952 L. If the unit owners' association or its common interest community manager has been
3953 requested in writing to furnish the resale certificate required by § ~~55-79.97~~ 55.1-xxx, failure to
3954 provide the resale certificate substantially in the form provided in this section shall be deemed a
3955 waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws,
3956 rules and regulations, or architectural guidelines existing as of the date of the request with
3957 respect to the subject unit. The preparer of the resale certificate shall be liable to the seller in an
3958 amount equal to the actual damages sustained by the seller in an amount not to exceed \$1,000.
3959 The purchaser shall nevertheless be obligated to abide by the condominium instruments, rules
3960 and regulations, and architectural guidelines of the unit owners' association as to all matters
3961 arising after the date of the settlement of the sale.

3962 M. The Common Interest Community Board may assess a monetary penalty for failure
3963 to deliver the resale certificate within 14 days against any (i) unit owners' association pursuant
3964 to § 54.1-2351 or (ii) common interest community manager pursuant to § 54.1-2349 and
3965 regulations promulgated thereto, and may issue a cease and desist order pursuant to § 54.1-2349
3966 or 54.1-2352, as applicable.

3967 **Drafting note: Technical changes.**

3968 § ~~55-79.97:2~~ 55.1-xxx. Properties subject to more than one declaration.

3969 If the unit is subject to more than one declaration, the unit owners' association or its
3970 common interest community manager may charge the fee authorized by § ~~55-79.97:1~~ 55.1-xxx
3971 for each of the applicable associations, provided, however, that no association ~~may~~ shall charge
3972 an inspection fee unless the association has architectural control over the unit.

3973 **Drafting note: The word "may" is replaced with "shall" because the phrase "no**
3974 **association may" as used in this section expresses an absolute prohibition, which, to be**
3975 **consistent throughout the Code, is more properly expressed by the phrase "no association**
3976 **shall."**

3977 § ~~55-79.97:3~~ [55.1-xxx](#). Requests by settlement agents.

3978 A. The settlement agent may request a financial update from the preparer of the resale
3979 certificate. The preparer of the resale certificate shall, upon request from the settlement agent,
3980 provide the settlement agent with written escrow instructions directing the amount of any funds
3981 to be paid from the settlement proceeds to the association or the common interest community
3982 manager. There shall be no fees charged for a response by the association or its common interest
3983 community manager to a request from the settlement agent for written escrow instructions;
3984 however, a fee may be charged for a financial update pursuant to this chapter.

3985 B. The settlement agent, when transmitting funds to the unit owners' association or the
3986 common interest community manager, shall, unless otherwise directed in writing, provide the
3987 preparer of the resale certificate with (i) the complete record name of the seller, (ii) the address
3988 of the subject unit, (iii) the complete name of the purchaser, (iv) the date of settlement, and (v) a
3989 brief explanation of the application of any funds transmitted or by providing a copy of a
3990 settlement statement, unless otherwise prohibited.

3991 **Drafting note: No change.**

3992 [§ 55.1-xxx. Exceptions to disclosure requirements.](#)

3993 ~~F.~~A. The resale certificate required by this ~~section~~ article need not be provided in the
3994 case of:

- 3995 1. A disposition of a unit by gift;
- 3996 2. A disposition of a unit pursuant to court order if the court so directs;
- 3997 3. A disposition of a unit by foreclosure or deed in lieu of foreclosure; or
- 3998 4. A disposition of a unit by a sale at auction; when the resale certificate was made
3999 available as part of the auction package for prospective purchasers prior to the auction.

4000 | [G.B.](#) In any transaction in which a resale certificate is required and a trustee acts as the
4001 seller in the sale or resale of a unit, the trustee shall obtain the resale certificate from the unit
4002 owners' association and provide the resale certificate to the purchaser.

4003 **Drafting note: Existing subsections F and G of § 55-79.97 are relocated to this**
4004 **proposed section for consistency with the organization for the provisions of the resale**
4005 **disclosures in the proposed Property Owners' Association Act (§ 55.1-xxx et seq.).**

4006 #